

CIVIL
GOVERNMENT
— OF —
MICHIGAN
AND THE
UNITED STATES

RUSSELL C. OSTRANDER

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CIVIL GOVERNMENT

OF THE

UNITED STATES,

AND OF THE

STATE OF MICHIGAN,

WITH STATEMENTS OF SOME GENERAL PRINCIPLES
OF GOVERNMENT

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A TEXT BOOK FOR SCHOOLS

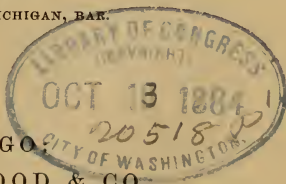
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INTRODUCTION.

That an outline, at least, of the principles and the machinery of civil government in the United States should be taught in the common schools, seems to be generally admitted. Teachers differ in opinion as to the best manner of teaching. For any plan of instruction some kind of text-book is a necessity. In the work herewith submitted has been attempted a statement of the general principles and the theory of our form of government, with a somewhat full description of the machinery of governing.

An examination of the work will show that, in describing the duties of public officers, and even in naming officers, much has been omitted.

The work cannot, of course, give the statute law of Michigan or of the United States. But it is believed that sufficient has been given, in a general way, under each subject treated, to fully illustrate the plan and form of government in both the Federal and State Governments.

A considerable number of references are made to books obtainable in nearly every law office, and in all public libraries. A reading of these will not be uninteresting or unprofitable to teacher or pupil.

The difficulty experienced has been to put matter into such shape that, preserving accuracy, it will be easily intelligible to the average common school student. If a dictionary has to be consulted occasionally no harm will come of it. The teacher will have much to do with the success of the study. If for illustrations of the text, history, and daily occurrences in governing are freely used, the result can be only benefit.

LANSING, Mich., July 1st, 1884.

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Essentially the same in all States; principle of local self-government recognized in all constitutions; general plan one in which powers of government are exercised by representatives or by the people themselves; powers separated and distributed; plan of government, limitations upon exercise of powers, rights of the citizen—fixed and determined, and incorporated in written constitutions constituting the fundamental law of the State; these constitutions subject to no change but by the people, and then only in certain manner.

Limitations upon powers may be different in different States. The colonies had each a constitution in its charter. Excepting two, all were swept away by the Revolution and others adopted. Constitutions of States admitted by Congress have been passed upon and approved by Congress previous to admission. Most of them have been framed under enabling acts of Congress—not so in case of Michigan.

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STATE LEGISLATURE.

Two houses: Senate, House of Representatives. Meet in separate apartments, at capitol.

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Has one hundred members; elected every two years; hold office two years; are elected by districts. Districts required to be of contiguous and convenient territory; to contain as nearly as may be the same number of inhabitants.

A township or city cannot be divided in forming districts;

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THE JUDICIAL POWER.

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CIVIL GOVERNMENT.

CHAPTER I.

DEFINITIONS.

State.

A body politic, or society of men, united together for the purpose of promoting their mutual safety and advantage by the joint efforts of their combined strength.¹

The terms *state* and *nation* are frequently employed as meaning the same thing. But while a state may be a nation, and a nation may be divided into, or made up from several states, the term nation means more nearly, People or Race.

The term, however, is used indiscriminately for designating either a principality, like some of the German states, or the Nation itself. Of course it is applied to the American States.

Constitution.

The fundamental law of a state, directing the principles upon which the government is founded, and regulating the exercise of the sovereign powers, directing to what bodies or persons those powers be confided and the manner of their exercise.²

¹ Cooley, Constitutional Limitations, 1; Story on the Constitution, §207; Bouvier Law Dict., "State"; Vattel b, 1, c 1 §1.

² Bouvier Law Dict. "Constitution."

That body of rules and maxims in accordance with which the powers of sovereignty are habitually exercised.¹

The constitution is to the state what it is to a society of persons. In our day one of the first matters to receive attention, where a number of individuals associate themselves permanently, is a constitution; a general organic law for the government of the society.

The term is frequently used with a meaning more or less limited than the one conveyed in the above definitions, but it has come to mean, more and more, the fundamentals of a free government; the first or foundation law; the organic law.

How Constitutions are Formed.

Constitutions may be *accumulated* or *enacted*. That is, the constitution of a country may be the mass of rules, customs, common law—written and unwritten—and decisions of the courts, which have accumulated and have been acted upon by the government, respected and obeyed by individuals, until they have come to be regarded as a part of the system of government. Or, a constitution may be enacted as a fundamental law of the body politic, either by the monarch or by the people; by the sovereign power.

May be Written or Unwritten.

Constitutions may be written or unwritten. The constitution of Great Britain is an *accumulated* and *unwritten* one. Those of the United States, both federal and state, are *enacted* and *written*.

¹Cooley, Const. Limitations, 2

Their Force and Effect.

In the United States constitutions are the written instruments agreed upon and adopted by the people of the United States or of the state, and are absolute rules of action and decision for all departments and officers of government, upon all questions covered by them. Any rule or act of any department of government, or of any officer of government, or even of the people themselves in opposition to them, will be altogether void.¹

So we say, when a law is passed by the legislature, federal or state, opposed to the fundamental law or constitution, that such a law is in excess of legislative authority and therefore unconstitutional and void.

In this respect mainly lies the difference in effect between an accumulated and an enacted constitution. In a country where the complete sovereignty is, by the system of government, vested in the same power or body which enacts the ordinary laws, any law, being an exercise of sovereign power, cannot be void, but if in conflict with any existing constitutional principle, must have the effect to change or abrogate such principle, instead of being nullified by it. This is so in Great Britain. The declared will of Parliament is the final law. There constitutional questions are addressed to the Parliament or to the people. Here, after the legislature has passed upon such a question, there is generally, when it is attempted to put the will of the legislature in operation, a right of appeal to the courts. "For the will of the people, as declared in the constitution, is the final law, and the will of the legislature is only law where it is in

¹ Cooley, Const. Lim., 3.

harmony with, or at least is not opposed to, that controlling instrument, which governs the legislative body equally with the private citizen.”¹

Sovereignty.

All political or civil government, presupposes a community of people united for the purposes of government, and a *sovereign* or *supreme* power residing somewhere. It may reside in the people themselves; it may be in a person, or body of persons, having sole and only control, and exercising the sovereign power. As applied to states, sovereignty imports and means the *supreme* power; a power above which there is no power. A state is called a sovereign state when this power resides within itself.² Usually the sovereignty of a state extends to and embraces all the subjects of government within the territorial limits of the state. Thus, France, Russia, Great Britain, and the United States, are sovereign states. In each the authority of government extends to all matters of government within the limits of the state. Neither of them is controlled in any matter of government by a power without or outside itself. None of them has any political superior.

Powers exercised by the sovereign authority.—We have said that the sovereign authority has all authority. The power to make and to repeal laws; the power to enforce the laws; to punish violations of laws; the power to direct, control, and carry on the government, and to provide the necessary political machinery and agencies for that purpose—all these are powers exercised by what we call the sovereign power or authority.

¹ Cooley, Const. Lim., 3.

² Cooley, Const. Lim., 1.

Law.

A law is defined to be a rule of action, prescribed by a superior power ; a rule or method of action ; a rule of civil conduct prescribed by the supreme power of a state.¹

There are many definitions of the word *law*, with a more or less extended meaning. In the sense in which the word is important here, it refers to the rule or rules of human conduct and action, in communities—municipal law—which Blackstone defines as “a rule of civil conduct prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong.”

But it is not individual conduct, alone, which is meant when the term *civil conduct* is used. Nor does the *rule* necessarily mean one prescribed, or enacted, by the legislature. A rule of conduct may be said to be prescribed, when it is recognized by authority as a rule.

“The aggregate of those rules and principles of conduct which the governing power in a community recognizes as the rules and principles which it will enforce or sanction, and according to which it will regulate, limit, or protect the conduct of its members,” is one of the definitions of *law* given in Bouvier. As if the question were asked, What is the law of the state? meaning the term in the concrete sense, the foregoing is a good answer. “The law of the land,” is an expression often seen and heard. It is seen in most of the American constitutions, and means not only the written or statute

¹See 1 Blackstone's Commentaries, § II ; 1 Stephen's Commentaries, 25. See, also, Montesquieu, Spirit of the Laws, b 1, Chap. 1.

law, but the unwritten law or common law, customs and usages, of the land.

For instance, the law of the land in the United States may mean : 1. The unwritten or common law and the statute law of England, so far as applicable here, in force at the time the independence of the colonies was declared. 2. The constitutions or fundamental laws of the United States and of the States. 3. Treaties made by authority, between the United States and foreign States and Nations. 4. The unwritten common laws or customs, which have obtained in various parts of this country, which are respected and obeyed by individuals and enforced by the courts. 5. The legislative enactments or statute laws.¹

“Law, in its broad meaning, *is the aggregate of legal rules and principles, as distinguished from any particular rule or principle.* No one statute, nor all statutes, constitutes the law of the state ; for the maxims of the courts and the regulations of municipal bodies, as well as, to some extent, the universal principles of ethics, go to make up the body of the law. It includes *principles*, which rest in the common sense of justice and right, as

¹ “By the law of the land is more clearly intended the general law, a law which hears before it condemns ; which proceeds upon inquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property and immunities, under the protection of the general rules which govern society ;” Webster’s argument in Dartmouth College case, 4 Wheaton, 518. See Story on the Constitution, Vol. 3, 264, 661 ; Cooley, Const. Lim., 441 ; Murray’s Lessees *v.* Hoboken, 18 Howard, 272. “The constitutional provisions, that no person shall be deprived of life, liberty, or property, without due process of law mean more than a mere legislative enactment. They restrict the legislature so that it cannot reach the life, liberty, or property of the individual, except when he is convicted of crime, or when the sacrifice of his property is demanded by a just regard of the public welfare :”—Atchison, etc. *R. R. Co. v. Baty*, 6 Nebraska, 37.

well as positive rules or regulations, which rest in ordinance. It is the aggregate of the rules and principles only which the *governing power* in the community recognizes, because that power, whether it be deemed as residing in a monarch, an aristocracy, or in the people at large, is the source of the authority and the sanction of those rules and principles."¹

Space here will not admit of any classification of different kinds of laws. The term statute will be hereafter defined. We read of the law of nations, which is the aggregate of the rules, customs and usages governing intercourse between and among nations, and to a large extent between their citizens. A *penal* law is one which inflicts a penalty for its violation. That part of a law which inflicts a penalty for its violation, or a reward for its observance, is called a *sanction*. Sanctions are of two kinds, *civil* and *penal*. A *prospective* law or statute, is one the application of which is to cases arising after its enactment. A *retrospective* law, is one which has an effect upon or applies to persons or things in connection with or reference to past events or conduct. These are also called *retroactive* laws.

If the effect of such a law is to take away vested rights it is so far void. See definition of *ex post facto* law.

Statute.

A law established by the act of the legislative power. An act of the legislature. The written will of the legislature solemnly expressed according to the forms necessary to constitute it the law of the state.²

The acts of bodies delegated with local legislative

¹ Bouvier, Law Dict. "Law."

² Bouvier, "Statute."

powers, or the power to make laws or some laws for the locality, as common councils of cities, boards of trustees of villages, township boards, boards of supervisors, etc., are not called statutes. *Ordinance*, or *resolution*, or a similar term is usually applied to them.

We have already seen that, in this country, a statute, opposed to the constitution, state or national, is void. It may be void as opposed to the express provisions of the constitution or as opposed to its spirit. Courts, however, though exercising a proper authority and clear duty, in declaring unconstitutional a statute which is plainly so, will only make such a declaration when the question is raised, and argued, and when the unconstitutionality clearly appears. The acts of the legislature will always, if possible and reasonable, receive a construction which will leave them in force. Later on in this work it will appear how the legislature in this country is itself subject to constitutional restraints in the manner of enacting laws. The courts have authority to go behind the act itself, to ascertain whether in its passage, constitutionally prescribed forms or methods have been followed.

Constitutions in different states prescribe different rules concerning legislation. One common provision, for illustration, in state constitutions, is that an act of the legislature or statute shall embrace but one object, which shall be stated in the title of the act. The object of this is apparent. The title itself calls attention at once to the subject of the proposed legislation, and there can be no hidden or secret legislation pushed through under cover of that title. It leaves each subject of legislation, proposed, to stand or fall upon its merits, and does not allow an urgent and proper legislative act, to drag

along with it an improper one. There is no such provision as is referred to, in the Constitution of the United States. Several times therefore we have seen a *rider*, as it is called, embracing a provision obnoxious to the majority of Congress, tacked upon and carried through by a bill appropriating money urgently needed by the departments of the government, the alternative being a rejection of the whole measure.

Other common provisions require that a bill shall be read a certain number of times before final passage ; shall be assented to by a majority of all the legislative body ; that the vote shall be entered in the journal of the body voting ; that legislation shall be considered and acted on publicly ; that no new legislation shall be proposed after a certain number of days in the session ; that the proceedings of special sessions shall be limited to subjects mentioned in the call of the officer having authority to convene the legislative body.

Statute law becomes known to the people by being printed and distributed. History tells us in what manner, in earlier times, the will of the law-maker became known to the people. It is said that Caligula wrote his laws in very small characters and then hung them upon high pillars, the better to ensnare the people. In England, formerly, and in the American colonies, many acts of parliament and royal proclamations were made known by being read in churches and in other public assemblages.

The constitutions of states generally specify at what time an act shall take effect. Since it is a rule that ignorance of the law does not excuse a person, it is necessary and proper that some opportunity be afforded the people to learn what the law-makers have enacted.

An act of Congress takes effect the day upon which it is approved by the President.¹

By the common law, statutes took effect by relation back to the first day of the session at which they were enacted. The manifest injustice of this rule led to an act of parliament, passed in the 33d year of the reign of George III, by which it was provided that, unless otherwise ordered, statutes should take effect from the day of receiving the royal assent.

There are many rules which have been adopted, by which statutes are construed, or their meaning and application arrived at.

Chapters ten to fifteen, inclusive, of Bishop on Criminal Law, discusses the principles of interpretation of Criminal Statutes. Chapter seven of Cooley on Constitutional Limitations, discusses the circumstances under which a legislative act may be declared unconstitutional, and the subject "Sources of Municipal Law," in the first volume of Kent's Commentaries, is largely devoted to this subject.

QUESTIONS.

What is a state? Tell the different meanings in which the word is used?

Write an abstract of the definition given.

Define *constitution*? What is its force? What is the object or purpose of a constitution? Has the word more than one meaning? What has it come to mean? How are constitutions formed? What do we understand by an accumulated constitution? Enacted constitution? Written? Unwritten? Force in the United States and States? In England? What force

¹ See 1 Kent's Commentaries, 455; *Matthews v. Zane*, 7 Wheaton, 164; *The Brig Ann*, 1 Gallison, 62.

in this country has a law opposed to the constitution? Write an abstract of the definition given of constitution.

What is understood by sovereign power, or sovereignty? As applied to states what does the term import? What is a sovereign state? How far does the sovereign power of a state or nation extend as to subjects? Territorially? What powers are exercised by the sovereign authority?

Write an abstract of the definition given.

Law, means what? What is a law? Give the several definitions and the meaning of each? What is municipal law? What is the law of any given state? What is understood by "the law of the land"? What may it mean in the United States? Is it restricted to acts of the legislature? Is the constitution of a state, a law? What is the law of nations? A penal law? A sanction? A prospective law? A retrospective law? Retroactive law? What is the effect of a retroactive law? Is it restricted in its effect? By what?

Write an abstract of the definition given of *law*.

Give the definition of *statute*? Ordinance? What effect has the constitution upon statutes? By what authority are statutes enacted? What authority decides finally upon the question of the constitutionality of a statute? Give some of the constitutional restrictions imposed upon the forms to be used in enacting statutes? Give the reasons for these restrictions? How do the people learn what laws are passed by the legislature? How were the laws formerly made known? When does an act of Congress take effect? An act of the English Parliament?

Give a written abstract of the definition of *statute*.

CHAPTER II.

CIVIL GOVERNMENT.

Government Generally.

To govern is to rule, regulate, influence. Government supposes or suggests, from a mere statement of the word, first, authority somewhere ; second, a person or persons, or subjects upon which the authority is to act.

In the ordinary sense or use of the word, as applied to individuals, government begins at home, in the family. The child first learns, there, what authority is and what obedience. The teaching is continued in the school, and the child passes along into the world, a member of the community, an individual in the body politic or state in which he lives, conscious that from the beginning he has been governed. The commands given have come from the father and mother and from the teacher. So far as government was concerned, his intercourse with other members of the family put upon him certain duties to be performed. These have been duties to do and not to do, acts. In the doing and not doing as required, he has been respecting and recognizing the rights of others, and under the same authority and obligations others have respected and recognized his rights.

Some of the duties imposed have been for the welfare of the family as a family, of which he was a part, perhaps to contribute by his labor, to some extent, to the family support.

The family is a little state. A person comes into the state as he does into the family, by being born into it.

Government a Necessity.

There is no conception to be had of men living otherwise than in communities, nor of communities of men without government. Government is as essential in the community as it is in the family. Men were made to live together, with wants rendering them mutually dependent upon each other. The community is a number of families, and the state or nation a number of communities.

It is of course possible to conceive of a man, by accident or because of a warped or diseased mind, living solitary and apart from his fellows. On an unpeopled island or in some wilderness he might live for years, under no restraints except natural ones, governed and controlled by no human laws. But this is simply a removing away from the natural order of things. Let other men intrude upon his solitude, and a community, the smallest, be formed. Instantly, each is under some restraints. Certain rules governing conduct, and respecting the rights of others are regarded by each member of the community. Without them the community would cease to exist. Increase the community, and the mutual dependency of its members increases, and becomes more far reaching. The government of the society will grow with the society. Society and government are both grown institutions, and have grown and do grow together.

The social state is natural, and therefore a necessity, and grows. Government arises from necessity out of the social state, and grows with it.

Civil Government.

It is the subject of government as applied to communities that we are concerned about. And not only as applied to communities or states, but to communities the members of which are engaged in those pursuits which are natural to mankind. A band of robbers or a purely military organization could be called a community ; both exist or have existed, and all were under government. But the community of which we speak, is the community which men seem naturally to form ; the community in which the family is the unit. The objects of such a community are those of the social or civil state, and the government of them is civil government. In such a community, we have seen, government is a necessity.

Why the frame or characteristics of government in any given community should be as they are, can perhaps be sufficiently answered. Certain natural peculiarities and characteristics of the people, soil, climate, industries followed—these may largely account for the kind of government.

There have been an endless variety of governments. It is said, however, that whatever form the government may take, “the fundamental idea, however rudely conceived, is always the protection of society and its members, security of property and person, the administration of justice therefor, and the united efforts of society to furnish the means to authority to carry out its objects.”¹

What Civil Government Imports.

When civil government, therefore, is spoken about, we understand: First, the existence of such a commu-

¹ Bouvier's Law Dictionary, “Government.”

nity as has been described; second, that there is a system of rules, usages and customs, more or less complex, by which the community and the members of it are governed, and, third, that there is somewhere authority, not only to make rules and regulations for governing, but to change, repeal and enforce them.

But it seems that these are common to all governments of the kind. They give no idea of the plan or form of government. Because, these rules may be few or many, may be fixed and established, or subject to constant change. The authority of government may be in the hands of one man, a body of men, or in the community at large. The authority may be within or outside of the community itself. Rights may, or may not, be defined.

It is the difference in these matters or in some of them which allows a classification of governments.¹

Definition of Government.

It is, perhaps, well here to define the sense in which the term government will be used and is properly used in this book. As commonly used it has different meanings, depending upon the connection in which it is used. The State itself, or body politic, is called, sometimes, the Government. It is applied to the administration, or body of persons in whose hands is the official power and direction of affairs. But, strictly, the State is the society of individuals, and the Government is the authority of the society. It is the aggregate of all the institutions by which society or the State makes and enforces the rules necessary to the welfare of the society and its members.

¹ For a very interesting classification of governments, see Bouvier's Law Dictionary, "Government."

Different Forms of Government.

It is not in the plan of this work to give any classification of the different forms of governments, nor to discuss in any way the subject of the origin and growth of government.

As leading naturally to an understanding of the system and frame of our own government, it may be said that the tendency of communities has been and is, to adopt or take on a form of government in which the individual member of the community has the largest possible voice and part in governmental affairs, consistent with the proper administration of affairs ; in which *certain* principles and rules are followed ; in which the principal recognized rights of the individual are defined and fixed by laws, and in which the powers of government are separated and distributed into different hands. In other words, the tendency is towards what we call *free* government. The object to be attained is liberty, civil and political. All this implies, of course, a moving away from systems of government in which these things were not embodied, a discarding of different methods and forms which before existed. If present forms and characteristics of what we call free government are approved and seem to be proper and necessary and for the good of the society and the individual, then, in noticing them and their advantages, the mind may dwell upon the state of society as it would exist without them, and some idea be gained of what progress has been made.

With what all Government must Concern Itself.

When we say that one object and end of government is the protection of the governed, it is not meant simply

that mischievous intruders shall be kept out of the society or state, nor the repelling of armed invasion. This is, of course, included in the meaning, and in earlier times states were kept constantly agitated upon the subject of outside invasion. There is little of this now among civilized nations.

Nothing has had so much to do with the change in this respect as the fostering of the natural relations of the family in communities. Following necessarily upon the adoption of this relation came, and comes, the natural desire to protect and care for the family, in sickness and in health, and to acquire a competency in property. But if a man could now only acquire and hold so much property as he could watch and guard, subject all the time to have it taken away by some one when his vigilance was relaxed, society, civilized society, could not exist. So, as has been already said, while society has been growing into this state, government has grown with the society.

Therefore the protection to the governed to be afforded by government, means the protection of individual rights in the community itself. This has come to be what government in modern times is principally concerned with. The intermingling in the social state gives rise to a multitude of duties owed by each individual to others generally, to some others particularly.

Some of these duties are to respect what we shall term natural rights, others are imposed by government, and the duties imposed give rise at once to rights in others to have the duties performed.

A right not recognized by government, or the authority of the society, is of no account or consequence.

It is only recognized rights which are available.

However proper an asserted right may seem to be, if it cannot be enforced, it is useless and not a right, except, perhaps, in the view of morals. This is easily comprehended and should be remembered.

It is therefore the great duty of government to concern itself with rights and their definitions. Judge Cooley, in his work on Torts, says: "Every government must concern itself with the definition of rights and the providing of adequate security for their enjoyment. If a government is properly and justly administered, this will be its chief business; and this in its true sense constitutes civil liberty."

Powers of Government.

We say that the powers of government are all powers necessary to carry out the essential objects of government, some of which have just been mentioned. But these powers admit of an easy classification or separation. There must be, and always is, a law-making power. This includes, of necessity, the power to change and repeal laws. A power to hear and determine questions arising upon the application of law,—to administer the law. A power to execute the law.

Making, amending and repealing laws, we call the exercise of legislative power. Applying or administering the law is the exercise of judicial power, and enforcing the laws, the exercise of executive power.

It is the difference in the manner of the exercise of these powers, which are inherent in all government, which constitutes the difference between free government and that more or less despotic.

Distribution of the Powers of Government.

The manner of the exercise of the powers of government, in theory at least, depends largely, if not entirely, so far as the question of free government is concerned, upon the distribution of those powers. To illustrate: Suppose the authority of government vested in one man—the king. He, exercising these powers, makes laws at his will, publishes them or keeps them secret, applies them in person, and executes them to suit himself. His punishments for violations of law are not known until he pronounces sentence.

He may pardon whom he pleases. He may suspend the operation of a law to please a favorite, or make a law, after an act has been committed, to punish an enemy.

It is evident that under such a reign civil liberty could not exist. The successor of such a ruler, on the contrary, might publish a code of laws, equitable, just, and calculated in every way to secure the liberties of the subject. He might judge fairly in the cases brought before him, and impartially and honestly execute the laws. Under such a ruler civil liberty would exist.

But no security would remain to the subject that this state of things would continue. A change might come over the ruler and the whole code of laws be repealed. He might insist upon hearing and deciding cases without reference to the established rules, and punish offences in such manner as occurred to him. Again, the ruler might not himself respect private rights at all, but override in his own actions rules which he compelled the subject to obey. Such a government as has been described has not been an unfrequent event. The security of person

and property in a whole empire has depended upon the temper and acquirements of the son of a king.

History tells us how enlightened communities have gradually shaken off such a state of things.

It has been done by distributing the powers of government, and setting bounds to authority. The setting of limits to authority is as much a part of governing, as much an act of authority, as any other.

Few of these changes for the better, in government, have been suggested or instituted by the ruler. They have come from the people. Many remain as the results of revolution, in which the people governed rose against the established government, and only submitted when concessions were made to them.

It is not difficult to understand how, if the law-making power is separated from the law-enforcing power, and the two powers reposed, for exercise, in different persons or bodies, the chances are better that a good government will exist. And if separate and distinct from both these is kept the power which we call the judicial power, the power which applies the laws to particular cases, another element of good government is added. But if the ruler or executive was not subject to the laws, or if he, at will, appointed and displaced judges, and overawed the legislative authority, order and security was not certain.

So we find that as communities have grown and men have become enlightened, the object and aim of men has been to make this distribution of power more certain, and the exercise of each more independent of the other.

Political Liberty.

In accomplishing such results, the citizen, the governed, has necessarily asserted himself more and more.

The voice of the community has demanded and enforced progress, until, in good governments, in free governments, the political liberty of the citizen has become a right. Political liberty has been said to consist in an effective participation by the individual in the making of the laws.

If, when political liberty is enjoyed by the subject, civil liberty and a free government in its full meaning is not enjoyed, the citizen must be at fault.

England has been the country in which the warfare for free government was begun, carried on and finished. English constitutional history will inform the American student by what means and after what time, a form of government in which the people participated became possible.

The young American citizen of to-day finds a free government, in which he is allowed directly or indirectly to participate. A plan of government in which the powers are separated, distributed, independent. The continuance of this made certain by written federal and state constitutions. The same constitutions setting bounds to authority, defining the principal rights of the citizen, and themselves beyond any change except in certain prescribed ways. The sovereign people have delegated portions of the sovereign power to departments and officers of government. The power to name the persons who shall exercise these powers is at stated intervals returned to the people. The will of the majority, lawfully expressed, is the supreme law. Powers not delegated remain in the people.

It should be borne in mind, in the study of any plan or form of government, that the sovereign power, residing somewhere in the state, can do what it will.

There is nothing over or above it. It can make such laws as it chooses, in such manner as it chooses, and enforce them in its own way. It can borrow money of its citizens and of foreign states and citizens, and pay or not as it thinks fit. It can, in the plenitude of legislative power, make north south, and change all commonly known standards of value, weight and measure. It can confiscate the property of the citizen, or give it to his neighbor; make murder a misdemeanor, and assault and battery a felony. It can establish a form of religion, and punish with death all who worship in any other form.

Of course, you say, that is not possible. Practically it is not. Theoretically it is. Practically it *has been* true, in effect, at least.

In this country the people are sovereign. Whenever a majority of them shall be of the same mind, what may they not do?

If we have a good government, its plan and characteristics should be understood in order to be perpetuated. If changes seem necessary, they should not be attempted by those ignorant of what they would remedy. The idea that the state, the nation, is something apart from the citizen, a thing to be libelled, resisted and plundered, is a mistaken idea. The state is yourself. It is governed wisely or not as you allow. Steal from it, and you put your hand in your own pocket. Cheat it, and you defraud yourself. More than this. The sins in governing, committed by the fathers, are often *only* visited upon the heads of the children.

QUESTIONS.

To govern is what? What does the word *govern-*

ment suggest or pre-suppose? Write or give an abstract of your own idea of *government* in the general sense? Where does government begin? What comparison between the family and the state? How does one become a person in the state?

Can men live without government? Tell what you can about this? What is civil government? What is the fundamental idea of government? What does civil government import? Give definition of government? What is the tendency of communities in regard to government? What is the object to be attained? With what must government concern itself?

What do we mean by protection of the governed? When is a *right* valuable? The great duty of government? What general powers has the government? What is meant by distribution of the powers of government? In what way connected with the question of free government? Illustrate.

What is meant by setting limits to authority? What changes have contributed to establish free government? From what source have these come? What is the effect of the distribution of the power of government? What evils are probable if not separated? What do you understand by civil liberty? By political liberty? In what country has the struggle for free government been prominent? Give a plan, general, of the government in the American states.

Sovereign authority is what? What may it do in government? Where is the sovereign power in this country? Tell what you can of this? Write an abstract of this chapter.

CHAPTER III.

GOVERNMENT OF THE UNITED STATES.

The term, United States, implies at once a union of states, and the Government of the United States, the government of that union. It will be learned, as this study progresses, that the theory of government in the United States, is that of local self-government. That is, the United States is made up of states, the states of counties, the counties of towns, and the towns in many states, of school and road districts, or other small divisions. These names all represent territorial divisions. They also represent the extent of communities for some purposes of government.

So far as is possible, in each of these political subdivisions, the affairs of the locality are attended to by the people of the locality. In their local affairs, the people govern themselves. In one sense of the term each is a little sovereignty ; a number of these form a sovereignty a little larger, and so on until we have a state.

The first thing to be learned of the Government of the United States is, that it lets alone local affairs. That it employs itself with those matters and subjects of government which are in their character national.

The second thing to learn is, that the powers of the General Government, or Government of the United States, are named, or enumerated, and, while the powers properly belonging to it are full and ample, the theory

is that all other powers and subjects of government belong to the states and the people.

A third thing to learn is, that the powers exercised by the General Government are named and limited in a written constitution, adopted by the people of the states. It has no power or authority over any subject not named in the constitution.

So the people of the states, live in a certain sense under two governments, that of the state and of the United States.

To illustrate, there was not in the beginning of our national existence a large territory, the people of which existed under one general form of government; the divisions of the territory into states was not by that general authority, and for the purposes of convenient government, as a state is now divided in smaller districts for such purposes. On the contrary, the then inhabited territory was divided into a number of colonies, and these colonies had separate and independent existences. Because the people of the colonies were deprived in a measure of political liberty, and not allowed, as they wished, to govern themselves in all local affairs, they declared their independence of Great Britain, and the war of the Revolution was the result.

Before the Revolution, whatever power was exercised over the colonies, in common, was exercised by the Crown or Parliament of Great Britain. When war broke out, the Congress of 1775, assumed the powers of a general government, acting in all matters affecting the general welfare of the colonies.

It conducted the war, declared the independency of the colonies, made treaties and assumed to itself general direction and control of general public affairs.

It was a government springing up of necessity. It had no defined authority ; no power to enforce obedience to its orders.

It was composed of delegates from the different colonies. Those delegates received their instructions from the conventions sending them. The people ratified the acts of that congress by obeying them. In order to define the powers of the General Government, the Articles of Confederation were adopted.

The powers given by those articles were not adequate, in many respects, and a Constitutional Convention was called. It framed a constitution which went into effect in 1789.¹

It is seen, therefore, how of necessity and for the mutual, organized protection of all, a number of independent colonies, united in establishing a general or national government.

¹ This convention was composed of delegates from all the original thirteen states, excepting Rhode Island. It assembled at Philadelphia, May 14, 1787. On the 17th of September following, a form of constitution was agreed upon. It was sent by the congress to the legislatures of the several states, and was by them submitted to conventions of delegates chosen in each state by the people. The several state conventions ratified the Constitution. Ratification by nine states was sufficient to establish it among those states ratifying it. It was ratified in Delaware, December 7, 1787 ; Pennsylvania, December 12, 1787 ; New Jersey, December 18, 1787 ; Georgia, January 2, 1788 ; Connecticut, January 9, 1788 ; Massachusetts, February 6, 1788 ; Maryland, April 28, 1788 ; South Carolina, May 23, 1788 ; New Hampshire, June 21, 1788 ; Virginia, June 26, 1788 ; New York, July 26, 1788 ; North Carolina, November 21, 1789 ; Rhode Island, May 29, 1790. July 2, 1788, the ratification by the ninth state was read to Congress, and an act was at once prepared for putting the Constitution into effect, and on September 13, 1788, Congress appointed days for choosing electors, and resolved that the first Wednesday in March then next should be the time and New York the place, for beginning under the new Constitution. Washington took the oath of office April 30, 1789. The Constitution became the law of the land March 4, 1789.

But to this Government were, as has been stated, only given national powers.

Thus we have the Government of the United States attending to, supervising, controlling and sovereign in all affairs of general national importance, and state governments, entirely independent in most matters of state concern, attending to, controlling and sovereign in all affairs arising within the respective state borders over which the General Government was not given expressly, or by necessary implication, control.¹

The general history of the condition of people in the colonies and of the proceedings from the first to organize and establish the Government of the United States, is interesting as explaining in a measure the reasons for government in any and every community of people. Specific reasons may differ, but the general reason is the same.

From what has been already said, it will be seen how important an instrument is the Constitution of the United States.

The carrying out and exercising of the powers therein given, is the business of our general government, and is the civil government of the United States.

QUESTIONS.

What does the term United States at once imply?

What is the theory of government in the United States?

¹The student is referred to the "Federalist" for the arguments advanced in favor of the adoption of the Constitution of the United States, and in support of the general plan and system of government therein provided. A reading of it will not only be generally valuable, as having been written while the subject was under discussion in the various state legislatures, but as showing with what jealousy the people, individually and as states, examined every provision delegating powers to the General Government.

What do you understand by local self-government?

What is first to be learned of the Government of the United States?

With what does it concern itself?

The second thing to learn? What do you understand by this?

A third thing to learn?

What does the Constitution of the United States do? Is it written or unwritten? Have you ever read it?

Do the people of the state live under more than one government? In what sense? Give the illustration in the text in your own way.

What caused the Revolutionary War?

Before the Revolution, by whom or what power was general authority exercised over the colonies? After the war broke out? What was and is the necessity for a general government?

Tell about the Articles of Confederation. Did you ever read them? The Constitution? How and by whom framed? How adopted? When? When did it go into operation? What powers are given the General Government? Write an abstract of the chapter.

CHAPTER IV.

THE TERRITORY OVER WHICH THE AUTHORITY OF THE GENERAL GOVERNMENT EXTENDS.

The authority of the Government of the United States, exercised within constitutional limits, extends over the whole territory embraced within the several states and territories.

It has jurisdiction also and authority over the District of Columbia, and over certain small divisions of territory acquired by cession or purchase, and used for navy yards, forts, arsenals, lighthouses, and the like.

But the authority exercised over that territory within and that without the borders and jurisdiction of a state, is very different in extent. We shall learn, further on, something concerning the authority given to the General Government with relation to the states and their inhabitants.

Over all territory outside the jurisdiction of a state, the authority of the General Government is supreme

In the District of Columbia Congress governs directly, attending to and legislating for all the internal affairs of the District.

In the navy yards, arsenals, and like places, few people will be found not actively engaged in the service of the United States.

It is usual, when a state sells or gives a part of its territory to the United States, for the purposes designated, to provide that process from the state courts may be served therein. Otherwise, persons committing crimes within a state against its laws, and fleeing to one of these localities, would be safe from arrest.

In the territories, the Congress of the United States prescribes in what manner the people shall be governed.

The people are not entitled to self government, except as Congress grants the right. Over them exclusive and unlimited power of legislation is given to Congress by the Constitution, and its exercise has been sanctioned by the courts.¹

¹ See Const. U. S. Art. 1, Sec. 8; Art. 4, Sec. 3. See also *The American Insurance Co. v. Canter*, 1 Peter's U. S. Rep., 511; 3

The United States owns the land, not patented, in all the great territories. It may sell or give it away. Its disposal is all within the authority and discretion of Congress.¹

Under the authority vested in Congress, it has passed laws providing for the erection of territorial governments, and the appointment of officers in each territory.²

It allows delegates in Congress to be chosen every second year by the people of organized territories, giving them the right to debate, but not to vote, in the House of Representatives.

Territories can only be admitted into the Union and become states at the will of Congress.

It need hardly be said that the inhabitants of the territories and of the District of Columbia do not possess the right to participate in the general government. They do not vote for President or Vice-President of the United States, and, except as above mentioned, are not heard in national affairs.

QUESTIONS.

Over what territory has the Government of the United States jurisdiction and authority?

Is the authority greater over the States, or over the territory not embraced in a state?

What authority is exercised over the District of Columbia? The Territories?

In what manner are the Territories governed?

Story's Commentaries, 193-198; *Hepburn v. Ellzey*, 2 Cranch, 445; *Corporation of New Orleans v. Winter*, 1 Wheaton, 91.

¹*Johnson v. McIntosh*, 8 Wheaton, 543; *Fletcher v. Beck*, 6 Cranch, 142, 143; Const. U. S., Art. 4, Sec. 3.

²See Ordinance of Congress of 1787, and acts since passed for same purpose.

To what extent do the inhabitants participate in the government of the United States?

Who owns the land in the Territories?

What authority admits a Territory into the Union?

Do the inhabitants of the Territories vote for President of the United States?

Why is this so? How is it in the District of Columbia?

Write an abstract of the chapter.

CHAPTER V.

DEPARTMENTS OF GOVERNMENT.

Legislative Department.

In the plan of government provided by the Constitution, and under which we live, the three great powers of government—the law-making or legislative, law-enforcing or executive, and the judicial power—are placed in different hands and constitute three departments, each separate and independent. The legislative power is vested in a Congress of the United States. This Congress is composed of two houses or branches, viz., the House of Representatives, or lower house, as it is called, and the Senate. Delegates from the States make up these bodies.

HOUSE OF REPRESENTATIVES.

Delegates to the House of Representatives are elected in the several states, by the people thereof, every second year. For the purposes of this election the States are

divided into Congressional districts. This division is made every tenth year, after the taking of the census of the United States. Representatives are apportioned to the several States by Congress, according to the respective numbers (population). In determining the numbers in each state, Indians not taxed, are excluded.

The act of Congress of February 25, 1882, provides that after March 3, 1883, the House of Representatives shall consist of three hundred and twenty-five members; that whenever a new state shall be admitted, the representatives therefrom shall be in addition to this number.¹

The following table shows the ratio of representation and whole number of delegates in the House of Representatives, under the Constitution of 1789, and after each census since.

	One Delegate to.	No. of Delegates.
Constitution of 1789	30,000 population.....	65
1st census, from March 4, 1793.....	33,000 population.....	105
2d census, from March 4, 1803	33,000 population.....	141
3d census, from March 4, 1813	35,000 population.....	181
4th census, from March 4, 1823	40,000 population..	213
5th census, from March 4, 1833	47,700 population.....	240
6th census, from March 4, 1843	70 680 population.....	223
7th census, from March 4, 1853.....	93,423 population.....	237
8th census, from March 4, 1863.....	127,381 population	243
9th census, from March 4, 1873	131,425 population	293
10th census, from March 4, 1883	154,325 population	325

The constitutional qualifications for a delegate are, that he must be twenty-five years old, have been for seven years a citizen of the United States, and, when elected, an inhabitant of the state in which he is chosen.

In case of a vacancy in the representation from any

¹ See also act of same date providing for apportionment among the states.

state the Governor of that state orders a new election to fill such vacancy.

The House of Representatives chooses its own officers. There are many of these. The principal officer of the House is the Speaker. He is the presiding officer and is chosen from the delegates elected. It is also usual to elect a Speaker *pro tempore*, who acts as presiding officer in the absence or during disability of the Speaker. By a custom of the House of Representatives, the Speaker selects and appoints members to the various committees of the House. As the greater part of the work of Congress is done in committee, and as the committee appointed to consider any branch of legislation has, justly, great influence over those subjects referred to it, it will be seen that the power of the Speaker is very great. His course in the appointment of committee-men at the opening of a new Congress ; indeed, the person elected Speaker, if of pronounced views upon political matters of present interest to the people, outlines in a great measure the policy of that political party which is in the ascendant in the House of Representatives, upon those matters.

Next to that of President of the United States, the office of Speaker of the House of Representatives has come to be, apparently, the most important, politically, in the government.

The House of Representatives elects its clerks, Sergeant-at-Arms, door keepers, and other officers necessary to perform its business.

In addition to the members elected from the states, a delegate chosen by the people of each organized territory, is allowed a seat in the House, and a voice in debate. He has no vote.

The House of Representatives has the sole power of originating bills for revenue,¹ and the sole power of impeachment.²

THE SENATE.

The Senate of the United States is composed of two senators from each state. They are chosen by the state legislatures for six years.

Each senator has one vote. No person can hold the office of senator who is not thirty years old, and who has not been a citizen of the United States nine years. He must also be a citizen of the state choosing him.

The presiding officer of the Senate is the Vice President of the United States. He is called President of the Senate. In case of the disability, death or removal of the Vice President, or when he is acting as President of

¹This means that all legislation to raise money for purposes of government, must originate in or be proposed by the House of Representatives. In all matters connected with the enactment or making of laws, the two houses of the legislature are of equal importance and power and laws may generally be proposed in either house. The constitutional provision regarding bills for revenue, is like the custom in England. In Parliament money bills can only originate in the House of Commons.

In Congress the Senate may amend bills of this character and must give them their assent before they can become laws. In England the House of Lords is not allowed to amend such bills, and even their right to reject them is denied.

²When the President, Vice-President, or any civil officer of the United States shall be guilty of treason, bribery, or any other high crime or misdemeanor, they are subject to impeachment, and removal if found guilty, and the articles of impeachment or charges must come from the House of Representatives. In trying one against whom charges are preferred, the Senate sits as a court to try the charges. If the President of the United States is tried, the Chief Justice of the Supreme Court of the United States presides. When sitting for this purpose senators are either sworn or affirmed to try the impeachment as judges would do. Two-thirds of the senators present must agree to convict. If the person tried is found guilty, the judgment of the Senate can only extend to the removal of the person from office, and disqualify him from holding or enjoying any office of honor, profit or trust under the United States.

the United States, the Senate chooses one of its members President *pro tempore*, to act in the place of the Vice President.

The Senate elects its officers, as does the House of Representatives. The Senate committees are not appointed by the President of the Senate, but are made up by the senators themselves, in caucus.

We have already seen that, in general, any law may originate in either house of Congress, and that the assent of each house is necessary to make a law.

Congress must meet at least once in each year. Their meeting is on the first Monday in December, and they meet at the Capitol, in Washington. Each house sits by itself.

Each house is the judge of the election, return and qualifications of its members. A majority of each is a quorum to do business, and a less number than a quorum may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide. Each house keeps and publishes a journal of its proceedings.

Neither house, during a session of Congress, can, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Senators and Representatives receive a compensation for their services, paid out of the Treasury of the United States.¹ They are privileged from arrest, except for

¹ Compensation first paid members of Congress was six dollars for each day's attendance, and six dollars for each twenty miles' travel by the usual road in going to and returning from the capital. This, in case of senators, was increased one-sixth after March 4, 1795. In 1796, the pay of senators and representatives was six dollars a day, and six dollars for every twenty miles' travel. In 1816, the compensation was fifteen hundred dollars, beside travel fees as before. In

treason, felony, or breach of the peace, during their attendance upon the sessions of Congress, and in going to and from the place where Congress meets.

QUESTIONS.

In our country, what division of powers is made? Into how many departments? What are they called?

What is legislative power? In the United States, where vested? How is the legislative body divided?

What are the qualifications necessary for membership in the House of Representatives? By whom elected? How are states divided for this purpose? Upon what basis is this division made? When? Vacancy? Principal officer of the House of Representatives? What can you say of his duties and powers?

What do you understand by bills for revenue? Impeachment? What is the rule in England concerning the originating of money bills? What is the Senate of the United States? Of whom composed? How many to each state? Qualifications for the place? Who presides over the Senate? When does some one else preside? In which may bills generally originate? Is the assent of both houses necessary to the enacting of a law? When does Congress meet? How often? Where? For what purpose? What authority decides on the election, qualifications and return of a member of Congress? What constitutional provisions are there in regard to adjournment of either house? What are members paid?

1818, it was fixed at eight dollars per day, and eight dollars for every twenty miles' travel. In 1856, a salary of three thousand dollars was fixed. In 1866 a salary of five thousand dollars, and mileage at twenty cents per mile, which is the present rate of compensation, although in 1873 it was fixed at seven thousand five hundred dollars, and actual traveling expenses.

In what Congressional district do you live? Name of your Congressman? Names of Senators from your state? What are the privileges of a member of Congress? Write an abstract of this chapter.

CHAPTER VI.

POWERS OF CONGRESS.

(Art. I, Sec 8.)

The Congress shall have power :

1. To levy and collect taxes, duties, imposts and excises ; to pay the debts and to provide for the common defense and general welfare of the United States ; but all duties, imposts and excises shall be uniform throughout the United States.

2. To borrow money on the credit of the United States.

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States.

5. To coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States.

7. To establish post offices and post roads.

8. To promote the progress of science and useful arts, by securing for limited times to authors and invent-

ors the exclusive right to their respective writings and discoveries.

9. To constitute tribunals inferior to the Supreme Court ; to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations.

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

11. To raise and support armies ; but no appropriation of money to that use shall be for a longer term than two years.

12. To provide and maintain a navy.

13. To make rules for the government and regulation of the land and naval forces.

14. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions.

15. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

16. To exercise exclusive legislation in all cases whatsoever over such district, not exceeding ten miles square, as may by cession of particular states and the acceptance of Congress become the seat of government of the United States,¹ and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of

¹ District of Columbia.

forts, magazines, arsenals, dock yards, and other needful buildings.¹

17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Some of the Constitutional Prohibitions Upon Congress.

1. The privilege of the writ of *habeas corpus*² shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

2. No bill of attainder, or *ex post facto*³ law, shall be passed.

¹ See ante, page 34 et. seq.

² This is the most famous writ in the law. The name is from the Latin, and means, that you have the body. It is a writ issued by a court or magistrate, directed to a person detaining another person, and commanding him to produce the body of the prisoner at a certain time and place, with the time of his detention and its cause. The object of the writ is to cause a legal inquiry into the cause of imprisonment, and to effect a release of the prisoner if his detention be illegal. The date of the origin of the writ is not known. It was in use by the judges in time of Henry VI. Traces of its existence are found in the time of Edward III. Similar provisions to the one above are found in most state constitutions. It has been held that Congress alone possessed power to suspend the writ. In 1863, Congress authorized President Lincoln to suspend the privilege of the writ throughout the whole or any part of the United States in his discretion. Under this act a partial suspension took place. The power to suspend the writ was never exercised by any state except Massachusetts. It was during "Shay's Rebellion," suspended for nearly a year (November 1786, July, 1787). In the Confederate States it was suspended during the war. Application for the writ may be made by the prisoner or by any one in his behalf. It is usually by petition, verified by affidavit. There is a penalty usually imposed on the magistrate for not issuing in proper case. See Hurd on Habeas Corpus, Bouvier's Law Dictionary.

³ An *ex post facto* law may be defined as one which makes that an offense which was not an offense when committed, or one which makes a crime, or act, punishable in a manner in which it was not punishable when committed,—a law made to punish acts committed

3. No money shall be drawn from the Treasury, but in consequence of appropriations made by law.

4. No title of nobility shall be granted by the United States.

5. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ; or abridging the freedom of speech or of the press ; or the right of the people peaceably to assemble and petition the Government for a redress of grievances.

6. The right of the people to keep and bear arms shall not be infringed.

7. No soldier shall, in time of peace, be quartered in any house without the consent of the owner ; nor in time of war, but in a manner to be prescribed by law.

8. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated ; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

9. No person shall be subject for the same offense to be twice put in jeopardy of life or limb ; nor shall he be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law ; nor shall private property be taken for public use without just compensation.

before the law was passed, and which had not been declared crimes by preceding laws. It does not mean the same as retroactive laws. Any *ex post facto* law is retroactive, but the converse is not necessarily true. As used in the Constitution it refers to criminal or penal statutes alone. There is a similar provision in most state constitutions. See 1 Kent's Com., 408; Bouvier's Law Dict., " Ex post facto." See, also, for something concerning retroactive laws, Cooley's Const. Lim., 265

10. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed ; to be informed of the nature and cause of the accusation ; to be confronted with the witnesses against him ; to have compulsory process for obtaining witnesses in his favor ; and to have the assistance of counsel for his defense.

11. Excessive fines shall not be imposed, nor cruel and unusual punishments inflicted.

12. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

13. The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people.

14. The validity of the public debt of the United States shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave.

15. The right of citizens of the United State to vote shall not be denied or abridged by the United States, or by any state, on account of race, color, or previous condition of servitude.

There is another branch to the legislature. After a bill or law has been approved by both Houses of Congress, it must be approved by the President of the United States.

If he approve and sign it, it becomes a law. If he does not approve it, it is his duty to return it to the House in which it originated, with his reasons for not

signing it. This is called vetoing a bill. When a bill is thus returned, there are three things, any one of which may be done. That House to which the bill is returned may take no further notice of it, or may amend it in a way to meet the objections stated in the veto, pass it as thus amended, send it to the other House of Congress to be approved as thus amended, and so on to the President for his approval. But Congress may refuse to assent to the objections stated by the President, and pass the bill notwithstanding them. This is called passing a bill over the veto. This requires that the bill be approved by two-thirds of the members elect in each House. If the President retains a bill for ten days, Sundays excepted, it becomes a law in the same manner as if he had signed it, unless Congress by adjournment, prevent its return. In such case it does not become a law.

QUESTIONS.

Tell what you can of the powers of Congress? What is Congress? Where does its power come from? How is it limited in regard to power? By what? Has it general legislative power over all subjects of government?

What are some prohibitions upon Congress? In what instrument are these prohibitions found? What do you understand by the term "prohibition?" What is an *ex post facto* law? What do you understand about the writ of *habeas corpus*?

What is the third branch of the legislature?

Its authority and power?

In what manner is the *veto* power exercised? By whom? What is its effect on proposed law? What follows it?

How can a law be passed over the veto?

Write an abstract of the chapter.

CHAPTER VII.

THE EXECUTIVE DEPARTMENT.

We have spoken first of the Legislative Department because it is the most important department of the Government.

While it is true that the different departments are independent and equal, it will be seen that the legislative has the greatest power. It can not control the action of a court already taken, or of the judge of a court, nor can it remove him, nor increase or decrease his salary. But, excepting the Supreme Court of the United States, Congress undoubtedly has power to abolish the system of courts as now existing and create a new one. It may increase or lessen the jurisdiction of inferior courts, it may take away from any inferior court jurisdiction, in such way as to practically abolish the court. It may change rules of evidence and enact statutes of limitations.

The Second Great Department of Government is the Executive.

The executive power of the United States shall be vested in a President of the United States, who shall hold his office for the term of four years.

The President must be thirty-five years old, and a natural born citizen of the United States.

He is paid a salary, from the treasury of the United States, of fifty thousand dollars a year.

He is supposed to reside at the Executive Mansion provided by the Government, usually called the White House, at Washington.

The Constitution provides that "he shall take care that the laws be faithfully executed."

Chief among his duties, therefore, is the selection and appointment of proper persons to assist in executing the laws of the United States.

For the purpose of executing the laws, and attending to the details of executive business, that business has been divided and is managed by several departments called Executive Departments.

For these departments the President nominates heads or managers, and, with the consent of the Senate, these heads of departments are appointed, and constitute the President's Cabinet.

These departments are the department of State, of War, of the Navy, of the Interior, of Justice, and the department of Post Office and Post Roads, etc.

The titles of Cabinet officers are Secretary of State, War, the Navy, the Interior, Attorney General and Postmaster General.

In these departments are employed the great number of men who are doing the detail work of a great government.

The President, with the advice and consent of the Senate, appoints our ministers to foreign powers, the justices of the Supreme Court, and the judges of all courts inferior to the Supreme Court.

If during a recess of the Senate a vacancy occurs in any office, the appointment to which is made by the

President, the President appoints some person to fill the vacancy, the appointment expiring at the end of the next session of the Senate.

By virtue of his office, the President is Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several States, when it is called into the actual service of the United States.

He has power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. He is required, from time to time, to give the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. This is done by what is called the President's message.

The President may, on extraordinary occasions, convene both Houses or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall deem proper.

In case of the death, disability, resignation or removal, of both President and Vice-President, the President of the Senate, if there be one, shall act as President; and if there be no President of the Senate, then the Speaker of the House of Representatives shall act as President.

The President and Vice-President of the United States are Elected by States.

Each state has as many votes for President as it has members in the Senate and House of Representatives in Congress.

In practice, each political party in a state, in representative convention, elects as many persons, called Presidential electors, as the state is entitled to vote in the

electoral college. The names of these men are printed upon the ballots cast by the voters.

Previous to the election and to the election of these electors, each party has met in national convention, and nominated candidates for President and Vice-President of the United States. Those electors having received the greatest number of votes in each State cast their votes for the party candidates.

QUESTIONS.

Who is President of the United States? How many Presidents have there been? What power has the President? What department of Government does he represent?

Tell what you can about his duties?

Can he make laws? Can he hold court?

What are the qualifications for the office? How is a President elected?

Write an abstract of this chapter.

CHAPTER VIII.

THE JUDICIAL POWER.

The judicial power of the United States is, by the Constitution, vested in one Supreme Court, and in such inferior courts as the Congress may from time to time establish.

The judges, both of the Supreme Court and the inferior courts, hold office during good behavior, and receive at stated times pay for their services from the treasury

of the United States. Their salaries cannot be diminished during their continuance in office.

Since the adoption of the constitution, Congress has established United States Circuit and District Courts, dividing for this purpose the whole territory of the states into circuits and districts.

Each circuit has a circuit judge, and each district a district judge, to preside over the court.

Courts are held at convenient intervals in each district at at least one place therein.

Supreme Court.

The judges of the Supreme Court are each allotted to some circuit, and the circuit courts are held either by a justice of the Supreme Court, by the circuit judge of the circuit, or by the district judge of the district in which the court sits, or by any two of the judges named sitting together.

There are eight justices of the Supreme Court of the United States, besides the Chief Justice. The salary of the Chief Justice is \$10,500 a year, and of each Associate Justice \$10,000 a year.

The Supreme Court holds an annual session at Washington, commencing on the second Monday of October.

The United States are divided into nine circuits. The first circuit comprises Maine, New Hampshire, Massachusetts and Rhode Island ; the second, Connecticut, Vermont and New York ; the third, New Jersey, Pennsylvania and Delaware ; the fourth, Maryland, Virginia, West Virginia, North Carolina and South Carolina ; the fifth, Georgia, Alabama, Florida, Mississippi, Louisiana and Texas ; the sixth, Michigan, Ohio, Kentucky and Tennessee ; the seventh, Indiana, Illinois and Wisconsin ;

the eighth, Missouri, Iowa, Minnesota, Arkansas, Kansas, Colorado and Nebraska : and the ninth, California, Oregon and Nevada.

Jurisdiction.

The courts of the United States have jurisdiction over all cases in law or equity, arising under the constitution, laws and treaties of the United States ; all cases affecting ambassadors, other public ministers and consuls ; all cases of admiralty and maritime jurisdiction ; all cases to which the United States shall be a party ; controversies between states ; between citizens of different states ; between citizens of the same state, where the dispute is concerning lands claimed under grants from different states, and between a state or its citizens and a foreign state or its subjects.

In all cases affecting ambassadors, or other public ministers and consuls, and in all those cases to which a state is a party, the Supreme Court has original jurisdiction. In all other cases it has appellate jurisdiction both as to law and fact, but subject to such exceptions and regulations as Congress may see fit to make.¹

¹ When we say a court has original jurisdiction over any subject, we mean that actions concerning that subject may be begun in that court. For instance: In Michigan the circuit courts have original jurisdiction in suits arising upon a promissory note, upon which one hundred dollars or more is due. Suit may be begun in the circuit court upon such a note ; but if the amount due on the note is only fifty dollars, suit in the circuit court can not be begun, or if begun, must be dismissed, because, it would be said, the circuit court has no jurisdiction. But original jurisdiction does not mean exclusive jurisdiction. The same suit may often be begun in one court or in another, as the suitor thinks best. To continue the illustration: A justice's court, in Michigan, has jurisdiction to try any cause arising upon a note to the amount of three hundred dollars. If one had a note upon which two hundred dollars was due, and wished to sue it, he could either begin his suit in a justice's court, or in the circuit court. Both courts have original jurisdiction where the amount is more than one hundred

As at first constituted the Supreme Court had five associate justices and the chief justice. One justice was added 1807, two more in 1837, and one in 1863. This made nine associate justices, or a bench of ten judges. Justice Caton died in 1865, during the administration of Andrew Johnson. A law was passed by Congress over the veto of the President, forbidding the filling of the vacancy, or appointment of any more judges, until the number of associate justices should be reduced to six.

In 1869, Congress passed a law, making the number of associate justices eight.¹

The Supreme Court has been a great power in national affairs. In the history of its proceedings, as in no other

dollars, and are said to have concurrent jurisdiction in suits on contract, involving from one to three hundred dollars.

By appellate jurisdiction is meant jurisdiction to try and determine or to review and correct suits or determinations, which have already been passed upon by some other and lower court.

Thus if you sue or are sued in justice's court, upon a contract involving in amount fifty dollars, and are not satisfied with the result of the suit, you may appeal your case, to the circuit court of the county and have it there again tried and determined.

In such case the circuit court is said to be an appellate court, or court to which an appeal has been taken. The most common exercise of appellate jurisdiction is where causes are taken from courts of general jurisdiction to the court of review, on writ of error or certiorari. In such cases, the questions passed relate to the decisions of law made in the court where the cause was tried, and the judgment is either affirmed, or the cause is sent back for a new trial.

Congress has by statutes limited the appellate jurisdiction of the Supreme Court of the United States, and the limitations refer principally to the amount involved in the controversy.

¹In all there have been eight chief justices: John Jay; John Rutledge, who only sat during one term, and whose appointment was not confirmed by the Senate; William Cushing, who had been an associate justice from the organization, and who resigned the office of chief justice at once, but remained on the bench as associate until his death; Oliver Ellsworth, appointed in 1796, and resigned in 1801; John Marshall, who was chief justice for thirty-four years; Roger B. Taney, who remained on the bench twenty-eight years; Salmon P. Chase, from 1864 to 1873, and Morrison R. Waite, the present chief justice.

history, can be seen the gradual harmonizing by judicial authority of the differences which early sprang up between the state and federal authorities.¹

A large and notable amount of this was accomplished during the term of John Marshall, as chief justice, and the posterity of the American citizens of that time have reason to congratulate themselves that so able and pure a judge, so great a lawyer and a man so thoroughly imbued with the correct spirit of our institutions was then the presiding judge and genius of this court.

The act or acts of Congress found in the United States statutes under the title "The Judiciary," make provision concerning the jurisdiction of the Supreme Court, not already established by the Constitution, and determine and limit the jurisdiction by the Circuit and the District courts. It is not profitable nor possible to attempt even a digest of these provisions.

One or two provisions may be noticed. The Supreme Court has exclusive jurisdiction over all controversies

¹ A considerable number of the earlier cases in this court were suits against states, by citizens of other states, of which the Supreme Court had by the constitution original jurisdiction.

In the case of *Chisholm v. Georgia*, reported in 2 Dallas' Reports, 419, the Supreme Court decided that a state could be sued by citizens of another state. To this decision and the authority of the court the legislature of Georgia made open defiance. The power appeared so inexpedient, that Congress proposed an amendment to the constitution in this respect, and the eleventh amendment to the constitution was adopted.

Another case of great importance was the one known as the Dartmouth College case (*Dartmouth College v. Woodward*, 4 Wheaton, 518). A charter had been granted by the British Crown to the trustees of Dartmouth College, in 1769. This the Supreme Court held to be a contract within the meaning of the Constitution; that an act of the legislature of New Hampshire altering the charter in a material respect without the consent of the college authorities, was unconstitutional and void as an act impairing the obligation of a contract. See Art. I. Sec. 10. Const. U. S.

The Supreme Court not only held the law void, but in doing so set aside the judgment of the state court affirming its validity.

of a civil nature where a state is a party, except between a state and its citizens, or between a state and citizens of other states, or aliens. In these cases it has original but not exclusive jurisdiction. It also has exclusive jurisdiction of all suits or proceedings against ambassadors or other public ministers, or their domestics or servants, and original, but not exclusive jurisdiction of all suits brought by ambassadors or other public ministers, or in which a consul or vice-consul is a party.

It is also provided that the trials of issues of fact in the Supreme Court, in all actions at law against citizens of the United States, shall be by jury.¹

Without particularizing, most civil cases heard and determined in a district or circuit court of the United States where the amount in controversy exclusive of costs exceeds the sum or value of five thousand dollars, may be reviewed at the option of either party in the Supreme Court.

There are some causes, or classes of causes, where writ of error or appeal is allowed without regard to the amount in dispute. Among these are cases touching patent-rights, copy-rights; actions for enforcement of the revenue laws, some actions against officers of the revenue.

But the Supreme Court has appellate jurisdiction in another class of cases concerning which something has already been said. This is jurisdiction to issue a writ of

¹ It is now many years since a jury was empaneled to try a question of fact in the Supreme Court. It is said that early in the history of the court they were regularly empaneled and held ready to be used if needed. The case of the State of Georgia against Samuel Brailsford, tried in 1794, when the court sat at Philadelphia, was tried by jury. It is probable no jury has been in attendance upon this court since before the time of Marshall.

error to the highest court of any state for the purpose of reviewing the decision of that court in certain cases.

The cases are those where is drawn in question the validity of a treaty or statute of, or authority exercised under, the United States, and the decision made by the state court is against their validity ; or where the validity of a statute passed by the legislature of a state, or an authority exercised under the state, is questioned, as being repugnant to the Constitution, treaties, or laws of the United States, and the decision of the state court is in favor of their validity ; or where any title, right or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under the United States, and the decision of the state court is against the title, right or privilege, or immunity specially set up and claimed by either party.¹

Circuit Courts.

The Circuit Courts of the United States have original jurisdiction of suits of a civil nature at law or in equity, where the matter in dispute, exclusive of costs, exceeds the sum or value of five hundred dollars, and an alien is a party, or the suit is between a citizen of the state where it is brought and the citizen of another state.

There are many other cases in which it has jurisdiction. A corporation created by a state, is a citizen of the state within the meaning of this act.

District Courts.

The District Courts of the United States have jurisdiction of all crimes and offences cognizable under the

¹See act Congress September 24, 1789, Sec. 25; Revised Statutes United States, Sec. 709. For a leading case on the subject see *Martin v. Hunter*, 1 Wheaton, 304.

authority of the United States, committed within their respective districts, or upon the high seas, the punishment of which is not capital (Revised Statutes United States, Title XIII, Chap. 3). The exception to this jurisdiction relates to the deposit, etc., of fraudulent papers in the office of the Surveyor-General of California.

The Districts Courts may also try and determine cases arising under any act for the punishment of piracy, where no circuit court is held in the district; all suits for penalties and forfeitures, incurred under any law of the United States; all suits at common law brought by the United States, or by any officer thereof, authorized to sue; all suits in equity to enforce the lien of the United States upon any real estate for any internal revenue tax; certain suits for the recovery of forfeitures or damages to the United States; all causes arising under the postal laws. It is not profitable to notice all the cases or classes of cases, in which the District Courts have jurisdiction. For the jurisdiction as fixed by statute see United States Revised Statutes, Title XIII, Chap. 3.

Jurisdiction; Source of.

It will be noticed that, excepting the power and jurisdiction given in the constitution to the Supreme Court, the matter of jurisdiction of the courts is left entirely with the Congress.¹

The Constitution, Art. 3, Sec. 2, provides to what cases the judicial power of the United States shall extend, and, of course, all jurisdiction is within these limits.

But in most cases the courts cannot exercise jurisdic-

¹ See *Turner v. Bank of North America*, 4 Dallas, 8

tion without the action of Congress, and Congress is not bound to enlarge the jurisdiction of federal courts, so as to embrace every subject to which the judicial power might constitutionally extend.

It has been decided that Congress has no power to extend or enlarge the original jurisdiction of the Supreme Court.¹

And that it has not delegated the exercise of judicial power to the Circuit Courts, but in certain specified cases.²

But it is seen, and it is important to remember, that while the federal authority, legislative and judicial, is restrained by constitutional provisions, still the United States are one nation and one people, so far as concerns matters and power arising under and given by the Constitution. The judicial power of the United States must be competent not only to take care of matters arising under the laws of the United States, but to decide upon the constitutionality of the laws passed by a State.

Either all cases arising under the Constitution, laws and treaties of the United States, must be brought in United States courts, or else the decision of a state court must be subject to review in the courts of the United States.

Decisions upon questions which affect the nation must be uniform. Nothing but confusion could arise if the final judgment in such cases could be entered in the courts of the states.³

¹ *Marbury v. Madison*, 1 Cranch, 137.

² *M'Intire v. Wood*, 7 Cranch, 504; *United States v. Bevans*, 3 Wheaton, 336.

³ See Kent's Commentaries, vol. 1, "Jurisprudence of the United States."

Court of Claims.

One of the necessary incidents of any sovereign authority is that it cannot be subjected to suit in its own courts, except it so elects, and then only in manner provided. For the purpose of passing upon the validity of claims against the United States, Congress has erected a court of claims. It was established by act of February 24, 1855. It consists of a chief justice and four judges, appointed by the President, with the advice and consent of the Senate, who hold office during good behavior. The pay of these judges is four thousand five hundred dollars per annum.

This court holds one annual session, at Washington, beginning on the first Monday in December.

The jurisdiction given this court, by Congress, is found in Chapter twenty-one, Title XIII, of the Revised Statutes. It may hear and determine claims founded on statutes, or contracts, or referred to it by Congress; set-offs and counter-claims of the Government against claimants; claims of disbursing officers; for captured and abandoned property.

A large portion of the business done by this court since the war of the Rebellion has arisen from claims preferred by parties claiming to have been damaged by acts of the federal army.

From judgment entered in this court, there is an appeal to the Supreme Court of the United States.

Any final judgment against the claimant, either in the Court of Claims, or on appeal to the Supreme Court, is a bar to any further claim or demand arising out of the matters involved in the controversy.

When a demand is allowed by the court, it is paid

out of the Treasury of the United States from any funds appropriated generally to the payment of claims.

Any claim against the United States which might be tried and determined in this court, is forever barred unless action is begun within six years after claim first accrues.

But there are exceptions in cases where certain enumerated disabilities exist when a claim first accrues. In the excepted cases, the claim is not barred until three years after the disability is removed.

QUESTIONS.

By what instrument are powers of government distributed? How and where was this instrument framed? In what hands is the judicial power vested? How are judges appointed? How long do they hold office? What courts have been established by Congress? Tell what you can of the Circuit Courts? How many justices of the Supreme Court? How many circuits in the United States? How many circuit judges? In what circuit do you live? In what district? What is original jurisdiction? Appellate jurisdiction? Concurrent jurisdiction? What can you tell of the history of the Supreme Court? Can it be abolished by Congress? Why not? Who is present Chief Justice? From what state?

What exclusive jurisdiction has Supreme Court? Can a case be begun in that court? What cases? What is the principal business or jurisdiction of Supreme Court?

What class or classes of causes may be reviewed by the Supreme Court? In reviewing these does the court exercise original or appellate jurisdiction? Does the

amount involved have anything to do with the right to have cause reviewed?

Is this true of all cases? What is the jurisdiction of Circuit Courts? District Courts, give jurisdiction?

What other court is there? For what purpose established? Why?

How is the court constituted? Its sessions?

What is necessary to be done before a state can be sued by one of its citizens? Why? Is there an appeal from decision of Court of Claims? To what tribunal?

Write an abstract of the chapter.

CHAPTER IX.

SOME OF THE CONSTITUTIONAL PROHIBITIONS UPON STATES.

1. No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a legal tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility. —Art. 1, Sec. 10.

Treaty, Alliance, Confederation.

The reason for this prohibition upon the states is obvious. The treaty making power ought to belong exclusively to the nation. There should be no dealings with foreign states or powers, except by the General Government. A treaty made by the General Government is the law of the land, binding upon all the states, and its enforcement or non-enforcement a question of general

national policy. This prohibition is an expression of the sentiment of the states assembled in convention for the purpose of laying the foundations for a system of government, that the dealing with all foreign powers should be through the national authorities, and that the states should have no such power. The President and Senate can alone make treaties.

Letters of Marque and Reprisal.

By the Constitution the authority is given Congress to grant these letters. It is also prohibited to the states.

A letter of marque and reprisal is a commission granted by the government to a private individual, to take the property of a foreign state, or of the subjects of a foreign state, as reparation for an injury committed by such state, its citizens or subjects.¹

It is a hostile measure to redress grievances, but such letters are granted when the nation granting them and the nation against whom granted are at peace. They are not necessarily preliminary to war. It is a manner of retaliating for injuries suffered by a nation or its citizens at the hands of another nation.

A vessel fitted out at private expense and armed with this commission is called a privateer. To encourage this sort of warfare, the owners and crews of such vessels are allowed to divide and appropriate to themselves the property captured. Privateering was formerly very common. In 1856, the leading powers of Europe, in congress at Paris, declared against privateering. In this congress and declaration the United States declined to join. During the civil war in America, Congress

¹ See Bouvier's Law Dictionary, "Letter of Marque."

authorized the President to grant letters of marque. None were issued.

The Confederates offered such letters to foreigners, but they were not accepted.¹

Coin Money.

There are many obvious reasons why, in a great nation, there should be a regular and uniform coinage. If each state could coin money, making a standard of weight and fineness for itself, giving to each coin a name of its own, the confusion would be great. The states are so closely bound together in interests, in commerce especially, that it would practically be impossible to conduct business with so many kinds of coins.

Bills of Credit.

No state shall emit bills of credit. In the sense in which the term is used in the Constitution, a bill of credit is paper or notes issued by a state, on the faith and credit of the state, designed to circulate as money.

The prohibition does not apply to notes of a state bank, drawn on the credit of a particular fund set apart for the purpose. The state may incorporate a bank, and bills be issued and circulated as money; but so long as they circulate upon private credit, they are not bills of credit within the meaning of the Constitution.²

Nor does the prohibition extend to an evidence of indebtedness issued by a state for money borrowed or services performed for it.

¹ See on this subject generally, 1 Kent's Commentaries, 96; Twiss, Law of Nations, 73; Story, Const.; Wheaton's International Law, § 290; Chitty, Law of Nations, § 1,356; Declaration of Paris, April 15, 1856; Bouv. L. Dict., "Privateer."

² See 1 Kent's Com., p. 407; *Craig v. State of Missouri* 4 Peters' U. S. Rep., 410; *Briscoe v. Bank of Kentucky*, 11 Peters', 257.

Bill of Attainder.

The doctrine of attainder is hardly spoken of or known to present generations. Formerly, in England, whenever a person had committed treason or felony and received sentence of death for his crime, it worked an attainder. It was the extinction of all civil rights and capacities. Its effect was to forfeit to the crown all his estate, real and personal. His blood was corrupted, so that nothing passed by inheritance from or through him.

Abolished in England by Statute 33 and 34 Victoria, Chapter 23. In this country, during and after the Revolution, acts of attainder were passed by several states.

A bill of attainder was a legislative conviction and punishment for crime.¹

We have already learned what an *ex post facto* law is, and probably no further reference need be made to that subject.

No State shall Pass a Law Impairing the Obligation of Contracts.

This provision has given rise to as much discussion and litigation as any clause in the Constitution. It is a constitutional restriction upon the legislative power of the states.

It was early settled, or decided, that when a law was in its nature a contract, and absolute rights had vested under that law, that a repeal of the law could not impair these acquired rights. A grant is a contract, within the meaning of the Constitution, and a grant from a state is as much protected as one from an individual.

¹See Macaulay's History of England; Story, on Constitution, § 1,344; Cummings v. Missouri, 4 Wallace, 277; *Ex parte Garland*, 4 Wallace, 333; Cooley, Const. Lim., p. 262 and note 1.

Nor can the legislature repeal laws creating private corporations, so as to take away property, or vest it in others, without the consent of the corporation, or some default on its part.¹ It has been held that a contract between two states was protected in the same manner.²

Republican Form of Government.

No state can abolish the republican form of government. Such a form of government is guaranteed by the Constitution of the United States, and if abolished would call for and receive the direct intervention of the federal authority.

QUESTIONS.

Write an abstract of Art. 1, Sec. 10, United States Constitution.

What is a treaty? What are letters of marque and reprisal?

What is a bill of attainder? *Ex post facto* law?

Reasons why a state should not make a treaty or alliance?

What authority can alone make treaties?

Why should not each state coin money?

What is a bill of credit? To what extent does the prohibition extend? Has a state power to incorporate a bank?

When was attainder abolished in England? When in this country? Write an abstract of what is said concerning laws impairing the obligations of contracts.

¹Fletcher v. Peck, 6 Cranch 87; New Jersey v. Wilson, 7 Cranch 164; Terrel v. Taylor, 9 Cranch, 43; Dartmouth College v. Woodward, 4 Wheaton, 518.

²Green v. Biddle, 8 Wheaton, 1. See, generally, Cooley's Const. Lim., 273; 1 Kent's Com., 413.

CHAPTER X.

SOME OTHER POWERS OF SOVEREIGNTY.

Eminent Domain.

The right to take private property for public use, is one inherent in the sovereign power. But for the restrictions upon this power in the Constitution of the United States and of the states, we should not be concerned with the subject, except as a general power of government. It is important to know the force and effect of the power as restricted.

What the Right is.

The eminent domain has been defined as “the right which belongs to the society or to the sovereign of disposing in case of necessity, and for the public safety, of all the wealth contained in the state.” This is a narrow definition because, unless convenience is to be treated as a necessity, it does not define the right. There exists in every government, or in the aggregate of the society, an idea and right of property remaining after the grant to individuals of the highest private title. It is sometimes said that when title is taken from the government, there is always an implied reservation by the government, of the right to resume possession and control of the property, in the manner directed by the Constitution and laws of the state, whenever the public interest requires it. “Title to property is always held upon the implied condition that it must be surrendered to the Govern-

ment, either in whole or in part, when the public necessities, evidenced according to the established forms of law, demand."

The right is the same one existing in the society or state, as the one to navigate public waters, to fish in them, and the like. But in the navigation of navigable lakes and streams, no private rights are interfered with. When, however, a common highway becomes a necessity, there are usually private rights to be first divested. The owner of land necessary to the road may dedicate it to the public for use as a highway, may sell it to the public, or may be forcibly dispossessed if he will neither sell nor give.¹

"As there is not often occasion to speak of the eminent domain except in connection with those cases in which the government is necessitated to appropriate property against the will of the owners, the right itself is generally defined as if it were restricted to such cases, and is said to be that superior right of property pertaining to the sovereignty by which the private property acquired by its citizens under its protection may be taken or its use controlled for the public benefit, without regard to the wishes of the owners. More accurately, it is the rightful authority which must rest in every sovereignty to control and regulate those rights of a public nature which pertain to its citizens in common, and to appropriate and control individual property for the public benefit, as the public safety, convenience, or necessity may demand."²

Property Subject to the Right.

Every species of property may be taken under this

¹See Cooley, Const. Limitations, Chap. XV.

²Ibid., p. 524.

right which can not be appropriated by any other recognized right. Money, and rights of action only, it cannot be needful to take in this way.

The Right as Belonging to the National Authority.

The regulation, in this country, of private rights, privileges, and immunities belongs to state government. The right of eminent domain pertains to state governments rather than to that of the nation.

In the new Territories, where the United States Government possesses complete sovereignty, it possesses this right also. When the state is formed, the right passes to it. The General Government then possesses the right only so far as it has sovereign authority. It may still exercise it for its own purposes, as for forts, light-houses, military roads, and similar purposes.

Must be for a Public Purpose.

The right can only be exercised for a public purpose. But what is a public purpose? Certainly if the public interest will in no way be promoted, the purpose cannot be a public one.

There could be no protection at all to private property if it could be taken for any but public uses. Yet there is great variety of opinion as to what may be considered and treated as a public purpose, so as to allow the exercise of this right. It has been said that if the public interest can in any way be promoted, it must rest in the wisdom of the legislature whether the benefit will be sufficient to warrant the exercise of the right.

The legislatures of several states have authorized the taking of lands for mill sites, when it was impossible, from the nature of the country, to obtain mill sites without overflowing lands thus condemned.

There may have been a time when the government should allow the exercise of this right in favor of saw mills or grist mills. At present, however, it would seem that hotels, churches, and mills of every kind were as much a public necessity as saw mills.

The right is most frequently exercised in condemning lands and other property for canals, drains, wharves, and public roads of all kinds. But, as has been before stated, the right is the same one exercised by government in building levees, court-houses, universities, prisons.

“The common highway is kept in repair by assessments of labor and money ; the tolls paid turnpikes, or the fares on railways, are the equivalents to these assessments, and the latter are equally public highways with the others, when open for use to the public impartially. The government provides court-houses for the administration of justice ; buildings for its seminaries of instruction ; aqueducts to convey pure and wholesome water into large towns ; it builds levees to prevent the country being overflowed by the rising streams ; it may cause drains to be constructed to relieve swamps and marshes of their stagnant water ; and other measures of public utility, in which the public at large are interested, and which require the appropriation of private property, are also within the power, where they fall within the same reasons as the cases mentioned.”¹

The Taking.

The taking must be by legislative authority, and the legislature of the state must determine in what cases the right shall be exercised. But the taking need not be

¹ Cooley Const. Lim., 533.

by the state itself, nor to the state. If in the opinion of the legislature the use can be made as effectual by the employment of other agencies, they may be employed.

In the case of a common highway, the title to the land taken is not disturbed. It remains in the former owners of the soil. The land is subjected to the burden of the public right of travel. This right acquired by the public is called an easement.

This easement or right is protected by government by criminal proceedings when the general right is disturbed. In other cases it is important and proper that the title to the property should be taken to the municipality for whose use it is especially designated. Take the case where land is needed for a district school-house. The building and the land upon which it is to be built are for the especial benefit of the people of the district. It is to be under the care of the district. The legislature delegates to the district the exercise of the power of eminent domain. In the case of railroads the right is delegated to the corporation. It being established by the legislature that railroads are a public necessity, and can be as well or better built, so far as the general benefit is concerned, by individuals or corporations, they have been authorized to take private property for the construction of such highways.

Limitations.

By whomsoever the right is exercised, it is limited in both the federal and state constitutions.

In the Federal Constitution is the direct provision that private property shall not be taken for public use without just compensation. This is usually repeated in state constitutions. But there are other limitations, constitu-

tional and resting in common sense. The taking must be limited to the necessity. When a part will do, the whole can not be taken. If the needed public use can be secured by allowing the owner to occupy for some purpose or purposes not inconsistent therewith, such occupation should be allowed him. If only the use is needed, the title should not be taken.

But much of what is necessary is for the legislature to determine, if indeed the whole question is not for them.

No person shall be deprived of life, liberty or property, without due process of law. This constitutional provision would require that the statutes of the state adopting or permitting a manner of exercising this great right of eminent domain, be followed ; and it is the ruling of the courts that in any taking, either by the state through its proper officers, or by individuals or municipalities to whom the power is delegated, the forms of law must be strictly followed.

Compensation must be provided for in every case, and it must be just compensation. When the law has directed to what tribunal the fixing of compensation shall be left, there is generally no going beyond the decision reached.

But it must be reached in a proper manner, upon a proper submission. The government may take private property for its own uses, without beforehand making compensation to the owner. When it is taken by private parties, it is reasonable that the constitution or the statute provide for payment either before or at the time of the taking. The constitution and statute law of each state must be consulted to ascertain the proceedings provided for exercising this right.

The United States a Preferred Creditor.

The United States have a preference, as creditors, over individuals and over states. 1. In the case of the death of the debtor, without sufficient assets. 2. In case of bankruptcy or legal insolvency of the debtor, manifested in some way known to the law. 3. In case of a voluntary assignment by the insolvent of all his property to pay his debts. 4. In the case of an absent, concealed or absconding debtor whose effects are attached by process of law.

The priority was intended to operate only where, by law or by act of the debtor, his property was sequestered for the use of his creditors.¹ In other words, the claim of the United States against a debtor does not operate to avoid any lien of other creditors already acquired, or any rights in the debtor's property or estate, but, the creditors standing upon an equal footing in respect to acquired or vested rights in the debtor's estate, the debt of the United States is preferred and first paid.

QUESTIONS.

What is the eminent domain? To what power does it belong? Is it restricted in the United States?

Tell what the right is. Upon what principle in government does it depend? Write an abstract of "what the right is." What sorts of property may be taken? Why not money? Why not rights of action? To what extent does the right belong to the National authority? For what purposes must the right be exercised? Why? What is a public purpose? What are common instances of the exercise of the right? By what authority must the taking be authorized? Can the state itself condemn

¹ Kent's Commentaries, I, p. 247.

property for its purposes? Can any other person or persons receive the authority? From what source do railroad companies derive the authority to lay a road through a farm?

Do cities exercise the same right in taking houses and lands for opening a street?

Can a school district condemn private property? For what purpose? Could it condemn property for a church site? Why not? What are some of the limitations upon the exercise of the power? Is there any limitation upon the power of the legislature to exercise the right?

How much property or land may be taken?

What is compensation? Write an abstract of this chapter. What can you say about the United States being a preferred creditor? When is its debt preferred?

Write an abstract of this subject.

CHAPTER XI.

PUBLIC REVENUES.

Taxation.

Government must be supported. It pays out money to those who do its business. It pays pensions, keeps an army and navy for the common defense, and is obliged to have revenue from some source. The public needs in this regard are supplied by taxation.

Taxes are "the enforced proportional contribution of persons and property, levied by the authority of the state for the support of the government and for all

public needs.”¹ “The public revenues are a portion which each subject gives of his property, in order to secure and enjoy the remainder.”² They are “burdens or charges imposed by the legislative power of a state upon persons or property, to raise money for public purposes.”³

The citizen and property owner owes to the Government, for the protection of life, liberty and property, a duty to pay taxes. They are necessary, that the Government may carry out its functions.

Taxes differ from subsidies in being regular and uniform, and they differ from forced contributions, loans and benevolences of arbitrary and tyrannical periods, in that they are levies by authority of law, and by some rule of proportion which is intended to insure uniformity of contribution and a just apportionment of the burdens of government. In an exercise of the power to tax, the purpose always is that a common burden shall be sustained by common contributions, regulated by some fixed general rule, and apportioned by the law according to some uniform ratio of equality.⁴ The power to tax is a sovereign power, and the sovereign power has unlimited right to tax all persons and property within the limits of sovereignty. In the United States, under the division of powers made by the Constitution, the authority to tax is legislative. We have already seen that money bills, or bills for revenue, must originate in Congress, and only in the House of Representatives. While, then, taxation is necessary in some form, it is for the legislature to say in what form, to what

¹ Opinions of Judges, 58 Maine, 591.

² Montesquieu, *Spirit of the Laws*, b. 13, ch. 1.

³ Blackwell on Tax-titles, p. 1.

⁴ Cooley on Taxation, p. 2, and cases there cited.

extent, and upon what subjects it is discreet or politic to lay and apportion a tax.¹

The executive and judicial departments have nothing to do with questions of legislative policy. No matter how unjust or oppressive a tax may appear, it will be enforced if not opposed to the fundamental law of the state. The motives which have influenced the selection of objects for taxation, or determined the rate, can not be inquired into for the purpose of invalidating the tax. But in the United States there are some restrictions upon the exercise of the taxing power.

Restrictions upon the Taxing Power.

First, in the Constitution. Duties, imposts and excises must be uniform throughout the United States. A capitation or other direct tax must be laid in proportion to the federal census, according to which representation in the House of Representatives is determined. No tax or duty can be laid on articles exported from any state. These are express restrictions. To them is to be added one, always implied : No tax can be laid on a state or its agencies of government, nor any which can tend to impair the sovereign power of the state.²

Second, limitations which inhere in the very power itself. Some of these may be given : 1. A tax shall be imposed for the public good ; but what is for the public good is for the legislature to decide. 2. A tax must be laid for a public purpose. The question here, however, is not one concerning which the determination of the legislature is final. What is or is not a public purpose, is a question of law. 3. A tax can only be laid upon

¹ Cooley on Taxation, p. 34.

² Const. U. S., Art. 1, Secs. 8, 9. Cooley on Taxation, p. 73, *et seq*

the persons and property within the territorial limits of the sovereignty ; but when a person is resident within a state, his personal property accompanies him, in contemplation of law, and he may be required to pay taxes on it wherever he is. Real estate within the limits of a state may belong to non-resident owners, but may always be taxed.

4. The power to tax can not be delegated. It must be exercised by the Congress itself.

5. And relating, as above stated, to an exception always implied : The Federal Government can not tax the means or agencies by which the state carries on its functions, nor the salaries of state officers, nor a state municipal corporation.¹

Taxes are direct and indirect. Direct taxes within the meaning of the United States Constitution are only capitation taxes (a tax upon heads, or persons) and taxes on lands.

Direct Taxes.

The Government has exercised the right to levy a direct tax but few times. It can not be made uniform, and is objectionable upon that and other grounds. At the breaking out of the war of the Rebellion, a direct tax was laid on the states. The Northern States, however, assumed the amount of the tax themselves, and paid it to the General Government, rather than have their citizens taxed in that manner.

Indirect Taxes.

The larger part of the revenues of the United States is raised by indirect taxation. Taxes are levied upon

¹ See Cooley, *Taxation*, pp. 41 to 66.

commodities, and are paid by the consumer, in the end, in the market price of articles taxed.¹

There are now very few taxes paid by citizens in any other way. These taxes upon commodities may be upon those manufactured at home, but are principally upon imported goods. A tax upon imports is called a duty or impost.

When the tax is upon the consumption or sale of a commodity, it is called an excise. An instance is the tax now paid the United States by retail dealers in tobacco and liquors.

Postage.—The money we pay as postage can not be called a tax upon us, since service is performed for us for which we should pay. If one does not use the post-office or mails, there is nothing to pay. The expense of the postal system can only fall on such an one when the post-office department is not self-supporting, and then only in common with everybody else.

Collection of the Revenue.—The revenue is collected

¹The text has given the rule applicable to a system of impost duties or taxes, laid for purposes of revenue only; but, in the interest of home labor and manufacturing, governments sometimes adopt a policy protective in character. This has been the policy of the United States for years.

Free trade is the removing of all restrictions and allowing goods from foreign nations and countries to be laid down in America, without tax or charge. Arguments are not wanting in favor of each system.

Many men think that our ports should be open to the world, that the world may compete for our trade. Others, that such a tax should be laid upon imported goods, that the money necessities of the government may be met by it. *Protectionists* believe that each nation should be in every way self-sustaining; that the manufacture of such goods as are needed in the country should be encouraged; that the price at which goods might be bought under a free trade system, is a small matter compared with a probable collapse of all manufacturing industries, or a continuance of these industries upon a basis of payment to labor fixed by the standard of thickly-inhabited European countries. The question has become a political one, and concerning it old party lines are much broken.

by the servants or officers of government. There are at all ports of entry in the United States collectors of customs. These, with their deputies and employés, look after the collection of the duties on goods brought into this country from foreign nations.

The United States are divided into Internal Revenue Districts, and over each of these is a collector. These officers and their deputies collect the internal duties from manufacturers and dealers in tobacco, cigars, liquors, and the like.

Public Lands.—A further and considerable source of revenue to the United States, is from sales of public lands.

We have learned that the General Government owns the unpatented lands in the great territories.

Many acres of these are sold by the Government. Large quantities are given away, the only requirement being a stated prior residence on the land, and certain improvements thereon.

QUESTIONS.

In what manner is Government supported?

What need has the nation of money?

What are taxes? What right has the Government to call upon citizens for contributions? Are taxes voluntary or involuntary contributions? How do they differ from subsidies?

What is a subsidy? Give an example of one.

Upon what principle is the power to tax exercised?

Is it a sovereign power? What department of Government fixes the amount and names the subjects of taxation?

What have the executive and judicial powers to do with the policy of taxation?

Give the constitutional restrictions upon the power of taxation.

What power determines, finally, whether a tax is for a public purpose or not? Why?

What are direct taxes. Indirect? What can you tell us about direct taxes? Are such taxes commonly levied in this country? In what manner is the revenue of the United States principally raised? Is postage a tax?

How is the revenue collected?

What other source of revenue has the United States?

Write an abstract of this chapter.

CHAPTER XII.

HOW THE PRESIDENT IS ELECTED.

The Primaries.

Parties will always make necessary the selection, before the time for casting the electoral vote for President and Vice-President, of candidates for these offices, that there may be combined effort and voting.

The selection of men for these high offices begins in the townships, wards and voting precincts all over the United States. The method of participating in nominations is republican. Delegates are chosen to a county convention. These delegates may be instructed, and in all honor bound, by the resolutions of these primary conventions, to select only such men in county convention as will, in the state convention, elect delegates who are favorable to the views of the people in the primaries, in the choice of candidates.

I know of no other way by which the people them-

selves, in a state, can with certainty be heard in a national convention. The county convention elects delegates to the state or district convention. Whether separate district (Congressional districts is meant) conventions are held, or all meet in state convention, each Congressional district nominates its delegates to the national convention. In both the Democratic and Republican parties the representation from the states is the same, viz., two delegates for each Congressional district, and two at large, chosen by the state convention, for each United States Senator. The Republicans allow also two delegates from each organized territory and two from the District of Columbia.¹

The place for holding the national convention is fixed by the national committees of each party.

There, at the appointed time, the delegates assemble. The credentials of each delegation are examined by a committee for that purpose. A temporary chairman is nominated by the national committee. Committees on permanent organization, resolutions, etc., are appointed. A permanent organization is effected, and the order of business adopted is taken up. When the order of balloting for candidates is reached, nominating speeches are made, the roll of states being called to allow names to be presented.

In Republican conventions a majority of all the delegates present and voting nominate; in Democratic conventions, a two-thirds vote is required.

Before the balloting begins, a platform has usually been adopted, setting forth the principles of the party, with its declarations upon any pending national issue.

¹At the last National Democratic convention, held since the manuscript for this work had been prepared, delegates from the territories were admitted.

The Electoral College.

Each state has as many votes for President and Vice-President, as it has delegates in both branches of Congress. The combined electoral vote of the states is the electoral college. A candidate to be elected by the electoral college must have a majority of these votes.

The electors, according to the Constitution of the United States, meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves.

They are required to name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and make three distinct lists of all persons voted for for both offices and the number of votes for each. These lists are signed and certified by them and transmitted, sealed, two to Washington, directed to the President of the Senate—one list by mail, the other by special messenger. The third list is transmitted to the judge of the district court in the district in which the electors meet.

These electors are chosen, then, by the people of each state, and in this way. Each party, having a candidate for these offices, chooses, in state conventions of the party, its electors. It is of course understood that those electors receiving a majority or plurality of the votes in the state will cast their votes for the party candidates.

Each party ticket is headed by the names of electors chosen by the party. The ballots are cast in the townships, wards and voting precincts of the state. At each polling place they are counted and the result announced. The statements of votes are sent to the county clerk of

each county, as a rule, certified as provided by law, and the result in the county transmitted to the persons or board designated to canvass the state vote. The persons determined by the state canvassers to have been elected, receive certificates of election. No senator or representative, or person holding an office of trust or profit under the United States, can be an elector

Congress is given power to determine the time of choosing electors, and the day on which they shall give their votes, and these times are the same throughout the United States.

Electors are chosen on the Tuesday next after the first Monday in November, every fourth year. They vote on the first Wednesday in December of the same year in which they are elected.

Counting the Electoral Vote.

The President of the Senate, on the second Wednesday in February next after the election, in the presence of the Senate and House of Representatives, opens the certificates. In order that certificates of the vote of each state may be at Washington on that day it is provided, that if none have been received from any state on the first Wednesday in January, the Secretary of State shall send a special messenger to the judge of the district in whose custody is one of the certificates, and said judge is required to transmit his copy to Washington at once. Upon opening the certificates, the votes are counted. The person having the greatest number of votes for President shall be President, if he have a majority of all the electors. The same is true of Vice-President. But if no person has a majority then, from the persons having the highest numbers, not exceeding three, the House of

Representatives chooses the President. In taking this vote it is necessary that there be present a member or members from two-thirds the states ; a majority vote of all the states is necessary to a choice; the vote is taken by states, the representation from each state having one vote.

If no candidate for Vice-President has a majority of all the electors, then from the two persons having the highest number of votes the Senate chooses the Vice-President. For this purpose there must be present two-thirds of all the Senators, and a majority of them elect.

If when the right of choice devolves upon them, the House of Representatives shall not choose a President before the fourth day of March next ensuing, then the Vice-President acts as President, the same as in case of the death of the President.

The following table shows the next electoral college:

Alabama, - - - -	10	Mississippi, - - - -	9
Arkansas, - - - -	7	Missouri, - - - -	16
California, - - - -	8	Nebraska, - - - -	5
Colorado, - - - -	3	Nevada, - - - -	3
Connecticut, - - - -	6	New Hampshire, - - - -	4
Delaware, - - - -	3	New Jersey, - - - -	9
Florida, - - - -	4	New York, - - - -	36
Georgia, - - - -	12	North Carolina, - - - -	11
Illinois, - - - -	22	Ohio, - - - -	23
Indiana, - - - -	15	Oregon, - - - -	3
Iowa, - - - -	13	Pennsylvania, - - - -	30
Kansas, - - - -	9	Rhode Island, - - - -	4
Kentucky - - - -	13	North Carolina, - - - -	9
Louisiana, - - - -	8	Tennessee, - - - -	12
Maine, - - - -	6	Texas, - - - -	13
Maryland, - - - -	8	Vermont, - - - -	4
Massachusetts, - - - -	14	Virginia, - - - -	12
Michigan, - - - -	13	Vest Virginia, - - - -	6
Minnesota, - - - -	7	Missouri, - - - -	11

Total,	401
Necessary to a choice,	201

QUESTIONS :

Tell what you can about how delegates are elected to nominate candidates? Where are they first chosen? To what convention? From what convention to the national convention? Why are there more than one set of conventions? How many delegates are allowed under party rules in the Republican national convention? In the Democratic? Who calls the conventions? Who fixes the place for holding them? Are delegates allowed from the territories? In what party? Give an account of the proceedings at national conventions? Is there any difference in parties as to the vote required to nominate? What is it? What is the electoral college?

Tell how they are chosen, where they meet, and how they vote? What record do they make of their vote? What is done with the certificates?

How are electors elected? On what day? Is this the same in each state? When do the electors vote? Is this on the same day in all the states?

Where are the electoral votes counted? When? Before whom? What is necessary to an election? If the electors have made no choice who elects the President? By what vote? Within what time? If there has been no choice for Vice-President, how is he elected?

How many electoral votes are there? How many necessary for a choice?

PART II.

GOVERNMENT OF MICHIGAN.

CHAPTER I.

STATE GOVERNMENT GENERALLY.

Relation of the State to the Federal Government.

We have already learned in what manner the original states erected for national purposes the Government of the United States.

We know that such powers as were given to the National Government, or which the states are prohibited in the Constitution from exercising, do not belong to the states. Excepting such, the states and the people of them have remaining all the necessary powers of government. -

In the union of states each state is a component necessary part. The states which have been admitted since the adoption of the Constitution of the United States, are upon the same footing as the original states, and bear the same relation to the Federal Government.

Relation of States to Each Other.

As between themselves each state is a separate, independent sovereignty, controlling and having within its territorial limits all the powers of government. No one is in any manner subject to the other.

In some matters of common importance, as we have

seen, such as the use of navigable rivers, the matters of inter-state commerce, and the like, Congress has made laws binding upon all the states and the inhabitants of them. But such powers as remain to the people are powers to be exercised in each state and its divisions, separately from every other state or its inhabitants.

State Powers.

State powers of government, therefore, while they cannot be enumerated, are all powers subject to the named restrictions. The people of each state are sovereign in all matters of state government. Some of the sovereign powers may not be exercised ; may lie dormant. They may be exercised over some subjects, and not all. But all subjects affecting the life, health, property, prosperity and general welfare of the people of the state, are subjects over which the states may exercise powers of government.

Form of State Governments.

The colonists brought to this country the principle of local self-government. This principle is recognized in the formation of the Federal and of each state constitution. The general plan of the state governments is one in which the people are sovereign, in which the powers of government are exercised by representatives of the people, or by the people themselves. The powers are separated and distributed into different hands. The plan of government, and limitations upon the exercise of powers by representatives, and by the people themselves, are, together with the principal rights of the citizen, fixed and determined, and written in a constitution adopted by the people. And in this instrument which is the fundamental law of the state, and can only be

changed by the people, the times and manner of making such change are fixed and determined.

Each state has essentially the same general form of government. But limitations upon the powers conferred on representatives, and upon the exercise of the sovereign power by the people themselves, may be different.

The constitution of a state, therefore, may confer upon the legislature power to legislate only upon certain subjects, may limit the exercise of executive power by the Governor or other executive officers, may provide such a system of courts as is thought proper, and may then provide that the constitution shall only be amended at stated intervals, and then only by a certain vote of the people. In framing and adopting this constitution, the people are exercising the power of sovereignty. It is final. There is no power, anywhere, to limit, change or overrule it. The constitution of each state, then, necessarily informs us what sovereign powers are exercised and by whom, and the limitations imposed upon their exercise. Some are explicit and minute, and others more general. Some limit the exercise of legislative power in one way, some in another. Each of the colonies had a sort of constitution, in the charters granted by the Crown and by Parliament. With the exception of those of Connecticut and Rhode Island, all were swept away by the Revolution and others adopted instead, by the people of the respective states. The two named colonies continued state governments under the colonial charters.

States admitted to the Union since the establishment of the national authority have had the constitutions which were adopted previous to admission passed upon by the Congress of the United States.

As a rule, these constitutions were formed under enabling acts of Congress, in the manner and by the action of such classes of persons as were designated in the act. But this plan has not been universal. No such act was passed for Michigan. She demanded admission under the provisions of the ordinance of 1787, claiming the absolute right to be admitted when a certain population existed and a satisfactory constitution had been adopted. A brief history of the Government of Michigan previous to admission is given in the next chapter.

Divisions of the State.

For the purposes of government, local and general, states are subdivided. These divisions are called municipal corporations. That is to say, the inhabitants of one of these subdivisions are treated as a single person, in the law, by the name given to the subdivision.

In Michigan these subdivisions are counties, townships, school districts, cities and villages. Each of these will be considered.

QUESTIONS.

In what manner was the National Government erected? By what authority? What powers were given the National Government? What powers were prohibited to the states? Can such powers be exercised by the states?

What is the relation of a state to the Federal Government? What are the relations of the states to each other?

Are the states independent? What powers of government are left to the states? Over what subjects, generally, may state government exercise control?

What is the theory of state government in this country? What is the fundamental law of the states? Are the constitutions of the states enacted or accumulated? Tell what you can about the form of state government? What is the state? Are state constitutions all alike? Is the general plan of state government the same in all the states? What power makes a constitution?

How can we tell in the different states what sovereign powers are exercised and by whom? Had the original states any constitutions? What were they? Do they remain? What object is there in Congress examining and approving the proposed constitution of a state? How were the constitutions of new states formed? Had Michigan an enabling act? What claim was made by Michigan to admission into the Union? Have you ever read the ordinance of 1787? What divisions are there in the state? Why are they made?

CHAPTER II.

MICHIGAN BEFORE ADMISSION TO THE UNION.¹

French Rule.

The territory now included in the State of Michigan was a part of that transferred in 1763 by France to

¹ The few facts given in this chapter have been principally taken from "Outlines of the Political History of Michigan," by Judge J. V. Campbell. There is an interesting letter written by the Hon. A. D. Fraser, of Detroit, which forms the introductory chapter to the compilation of Territorial Laws of Michigan, which has also been used. Parkman's "Discovery of the Great West," and his "Pioneers of France in the New World," have been consulted, as have also the early maps of the country to be found in the state library at Lansing.

Great Britain. It was a part of the territory colonized by the French, and held under the government of New France and Louisiana. From its first discovery, until the conquest by Great Britain, its history is a part of the history of Canada, and most of its French inhabitants were Canadians by birth or connections. Previous to its cession to Great Britain, whatever supervision was exercised over the affairs of the territory was by the authorities in what was afterwards Lower Canada.

It is claimed that Champlain discovered this region as early as 1612. A mission at the Sault de Ste. Marie was founded by Marquette in 1668, and very soon after one was founded on Michilimackinac island. This latter, as early as in 1670, was removed to Pointe St. Ignace. In 1679, La Salle, on his way to the Mississippi, built a timber fort at the mouth of the St. Joseph river. La Motte Cadillac returned to Detroit from France on the 24th of July, 1701, with a commission as Commandant, and authority to establish a permanent settlement at Detroit. "This was the beginning of the settlement of Michigan for purposes of habitation and civil institutions."¹

Upon the arrival of Cadillac, Fort Pontchartrain was at once commenced. It is probable that no other authority was exercised in the settlement than by the Commandant, and that his authority was nearly or quite unrestricted.

Settlers necessarily, from reasons of safety, lived in the fort, and so came under the government of the Commandant. Cadillac was succeeded by De La Foret. Up to 1750, various concessions of land had been made to individuals by the Governor and Intendant of the

¹ Campbell's Out. Pol. Hist. Mich., 54.

Province. At the Indian outbreak in 1763, there were but three occupied points in the territory now belonging to Michigan. These were St. Joseph, Mackinaw, and Detroit. Of these Detroit alone escaped capture. During the entire time Michigan was under French rule, the aim seems to have been to discourage rather than to encourage emigration and settlement. The territory was valuable as a fur-producing district, and the hardy men engaged in that traffic in the country seem to have been under no particular restraint; governed by no laws. Their particular business was encouraged by the Government. But what we denominate government did not exist in any form. There were neither laws, courts, nor officers of civil government. The little restraint in any manner exercised, seems to have been purely military.

British Rule.

After the treaty of 1763 had been ratified, the King of Great Britain issued a proclamation for the government of the French possessions. "So much of Canada as was afterwards known as Lower Canada, he established as the government of Quebec. The country west of Quebec not ceded to Indians, was to be left for hunting grounds.

In 1774, the Quebec act was passed by the Parliament, by which the entire British possessions west of New York, north of the Ohio river and east of the Mississippi, were incorporated into the Province of Quebec, and made subject to its government.

This statute established the Canadian and English law as furnishing rules of decision in civil and criminal cases. The legislative power was placed in the hands of the Governor and a council of not less than seventeen,

nor more than twenty-three, persons, appointed by the Crown, whose acts were subject to be reviewed by the King in Council. All the ordinances of the Province were annulled. An attempt to introduce into the act a provision giving to the colonists the right to the writ of *habeas corpus*, was opposed by the Ministry and defeated.

The act allowed the Council to impose such taxes as the inhabitants of the various districts should vote for roads and buildings and other local purposes. The creation and regulation of courts was left entirely at the pleasure of the King.

From the cession of this territory in 1763, to the time the Quebec act went into operation, Michigan had been under no civil government whatever.

Indeed, the preamble to the Quebec act recited that, by the former Royal Proclamation, "a very large extent of country was left without any provision being made for the administration of any civil government therein."

And the passage of the Quebec act did not remedy matters. The act was itself hateful to the people of the colonies. It was denounced by the American Congress of 1774. Within a few months after its passage repeated petitions and protests were sent to England by the people in the Province.

An Assembly was demanded and the right to the writ of *habeas corpus*, among other things. Such a petition was presented in the House of Lords by Lord Camden. It is said an intimation was given the petitioners that both an Assembly and the writ of *habeas corpus* would be granted upon condition that the principle be recognized that Parliament had over the colonies unlimited right of legislation.

This Quebec act is one referred to in the Declaration of Independence. Under this act a few justices of the peace were commissioned. In 1776, two persons accused of theft were tried, convicted, and executed at Detroit. They were tried before a justice of the peace by direction of the Commandant. The whole affair was a mockery, and warrants were afterwards sent for the arrest of the Commandant and the justice, who escaped. This territory was too far from the Provincial capital for the Government, with the means of communication then available, to exercise very much care over it. In 1788 the Governor General of the Province divided it into four districts. In the jurisdiction of the district of Hesse, which embraced all the country west of Long Point on Lake Erie, Detroit, still retained by the British, came.

It was not until this year (1788), that any courts were established in Upper Canada. The courts then established were called Courts of Common Pleas; were courts of record, with a clerk and sheriff.

So it was, until 1788, that the Detroit settlement and other western posts were left, practically, without any provision for civil government.

In the meantime the Revolution had given the colonies their independence. Michigan, by the treaty of 1783, made after the close of the war, belonged not to the British, but to the American states.

The ordinance of 1787, for the government of the Northwest Territory, had been passed by the American Congress, but was, of course, without effect in Michigan. It required a further treaty, in 1794, to obtain possession of the forts and posts in this territory. By this treaty they were all to be surrendered on or before June 1st,

1796. At the proper time Winthrop Sargent, the Secretary and acting Governor of the Northwest Territory, with General Wayne, took possession of the fort at Detroit. The fort at Mackinaw was, at about the same time, surrendered. "On the first day of July, 1796, Michigan, for the first time, became an American possession."¹

It was not until two days after the time fixed for the surrender of the western posts, that the legislature of Upper Canada passed an act to discontinue holding courts at Detroit and Mackinaw.²

American Rule: Ordinance of 1787.

On the 18th of August, 1796, the acting Governor of the Northwest Territory set apart the county of Wayne. "Its boundaries extended from the Cuyahoga River westward to about the dividing line now existing between Indiana and Illinois, and thence northward to the national boundary line, including all of the subsequent Territory of Michigan, and a portion of Ohio and Indiana."³

A Court of Common Pleas for Wayne County was at about the same time organized, presided over by judges appointed by the Governor. There was one session held annually, at Detroit, of the Supreme Court of the Territory. Michigan was now governed by the ordinance of 1787, an instrument in one sense a statute and in another and probably a more accurate sense, a constitution. It contained six articles of compact between the United States and the people of the Territory.

¹ Outlines Pol. Hist., 197.

² Ibid., 198.

³ Ibid., 205.

It was in 1789, and again in 1792, supplemented by further acts of Congress. By its terms a governor was to be appointed by Congress for three years, a secretary for four years, and three judges to hold office during good behavior. The governor could lay out counties and townships, and appoint magistrates and other civil officers at his pleasure. A majority of the governor and judges were to adopt for the territory, from the laws of the original states, such laws as they thought suitable, which were to remain in force until disapproved by Congress or altered by a future legislature. By the supplemental act of 1792, a power to alter and repeal laws so adopted was conferred on the governors and judges. The governor and judges adopted a Code for the government of the territory.

When there should be five thousand free male inhabitants in the territory, an assembly was to be elected, with a delegate for each five hundred free male inhabitants. When the number of delegates was twenty-five, the assembly had power to fix the representation. A council of five members, to be chosen by Congress from ten persons nominated by the assembly, was also provided for, the councilors to serve five years, the delegates two years. The governor had an absolute veto, and could assemble, prorogue and dissolve the legislature. The first assembly was elected in 1798 and met at Cincinnati February 4, 1799. The elections were *viva voce*. Three delegates were allotted to Wayne County. This legislature elected William Henry Harrison delegate from the territory in Congress. Gen. Arthur St. Clair was governor. The delegate to Congress was instructed to obtain for the territory title to the land on section sixteen in each

township, for school purposes, and the title to the entire township of land which had before been promised in aid of schools and colleges.

Indiana Territory.

By the ordinance of 1787, it was contemplated that not fewer than three nor more than five states should eventually be erected out of the Northwest Territory. In 1800, Congress provided for dividing the territory, setting up from it the new Territory of Indiana, which embraced all the former territory west of a north and south line, passing a few miles west of Mackinaw. Gen. Harrison was the first Governor of the Territory of Indiana. The seat of government of the Northwest Territory was by Congress removed from Cincinnati to Chillicothe. The legislature assembled there in November, 1801. At this session the town of Detroit was incorporated. In 1802, Congress authorized the people in that part of the territory east of Indiana and south of a line running east from the southerly point of Lake Michigan to adopt a constitution, and annexed all north of that line to Indiana, but reserving power to make it a separate territory or to attach it to Ohio. This plan threw the legislative power, so far as the people of Michigan were concerned, back into the hands of the governor and judges. The action of Congress was denounced as a political trick.

But the union with Indiana was for a short time only, for January 11, 1805, Congress erected all the Territory of Indiana, north of a line drawn east from the southerly extreme of Lake Michigan, to Lake Erie, and east of a line from the southerly bend of Lake Michigan north to the northern boundary of the United States, into a separate territory, to be

called Michigan. This act was to take effect June 20, 1805. Detroit was made the seat of government, and the plan of government provided for in the act was in all respects similar to the one provided in the ordinances of 1787 and 1789.

Territory of Michigan.

On the 2d of July, 1805, the territorial government was organized with William Hull, governor, Stanley Griswold, secretary, and A. B. Woodward and Frederick Bates, judges. A third judge, John Griffin, was appointed the next year. Judge Woodward was presiding judge. District courts were created, held by a chief justice and two associate justices, appointed by the governor.

During the administration of Hull, little seems to have been done or attempted to advance the prosperity of the territory. Quarrels and bickerings seem to have occupied a considerable share of the time and energy of those in authority. No counties were laid out. Roads were few, and those running up and down the Detroit River. Trouble with Indians was experienced. War with Great Britain was declared in June, 1812. Sixteen years after Michigan became American territory, we find it surrendered to the British by its first territorial governor.

This closed the career of Gen. Hull. Time has not, despite the efforts of the friends of Gen. Hull, served to change the opinion which was then pronounced by his fellow citizens.

From the time of Hull's surrender to the close of this war, what took place in Michigan is a part of the history of the war. Civil government was suspended.

The hardships endured by men, women and children about the western posts of that day, the use made by the British of Indian auxiliaries, the cruelties perpetrated by the savages, if not at British instigation, at least by the assent of British officers—all have been written.

On the 28th September, 1813, the fort at Detroit was again in the hands of Americans. "The overjoyed inhabitants were released from what had become a reign of terror. * * * * On the 29th Gen. Harrison issued his proclamation restoring the civil authority as it had been before the surrender."¹

In October, Gen. Lewis Cass was made Provisional Governor of Michigan, was afterwards made permanent governor, and William Woodbridge was appointed secretary. Wayne County was again laid out to include that part of the territory in which the Indian title to lands had been extinguished, and the whole territory was divided into road districts.

On the 19th of April, 1816, Indiana was authorized to form a state government, and was admitted to the Union December 11, 1816. Illinois was admitted December 3, 1818. From this time all the old Northwest Territory, north of Indiana and Illinois, became a part of Michigan. In the spring of 1818, the population of the Territory entitling it to a representative government, the question was submitted to the people and voted down. Though the act for the government of the Territory provided that the delegate to Congress should be elected by the Territorial legislature, one elected by popular vote, in 1819, was recognized. This system of electing delegates was continued. In 1823

¹ Out. Pol. Hist., 370.

Congress transferred the legislative power to the Governor and a council, composed of nine persons to be chosen by the President out of eighteen persons to be elected by the people. The Council was organized in June, 1824. In 1825, the Governor and Council were authorized to divide the Territory into townships and incorporate them; the number of Councilors was increased to thirteen. In 1827, by act of Congress, the *people* were allowed to choose thirteen councilmen. Governor Cass having been appointed to a place in the cabinet of President Jackson, resigned his office as Governor, and John T. Mason, the Secretary of the Territory became acting Governor. Mr. Mason resigned his secretaryship in favor of his son Stevens Thomson Mason.

In August, 1831, George B. Porter, of Lancaster, Pennsylvania, was appointed Governor, qualified, and removed to Detroit. In 1832 the people voted it expedient to form a state government.

On the 28th of June, 1834, all the territory west of the Mississippi River, and north of Missouri, as far as the Missouri and White Earth rivers, was attached to, and made part of, the Territory of Michigan. The legislative council was also authorized to hold an extra session at the call of the Governor. The necessity for this arose from the annexation.¹

Governor Porter died in 1834, leaving Stevens T. Mason acting Governor. No successor to Governor Porter was ever appointed. "The Council was called together by Mr. Mason, in September. The western territory was set off into the counties of Dubuque and Des Moines, and put into the same circuit with the

¹ Out. Pol. Hist., 440.

county of Iowa, east of the Mississippi. A law was passed for taking a census of the Territory.”¹

This census showed within the original boundaries of Michigan territory a population of 87,273 free inhabitants. Passing by the setting off of Wisconsin as a separate Territory, which was done in 1836, we come to the events connected with the admission of Michigan into the Union.

Michigan Admitted as a State.

In May, 1835, a convention met at Detroit and framed a constitution for submission to the people. In October, 1835, at a popular election, the constitution was ratified, and the following officers elected: Governor, Stevens T. Mason; Lieutenant Governor, Edward Mundy; Representative in Congress, Isaac E. Crary. These persons were to hold office upon the Congress ratifying the action of the people, and admitting the Territory. A state legislature was also elected, which met on the first Monday in November, 1835, and elected two United States Senators. There was considerable opposition to the admission of the State. No enabling act had been granted by Congress for the formation of the Constitution. On the other hand it was claimed that the ordinance of 1787, was in the nature of a compact, and entitled the people of the Territory, without further authority, to form a constitution and be admitted, when the requisite population had been attained.

But the slavery question was the real question involved. From the time Congress began admitting states it had been the practice to admit a free and a slave state together, or alternately. In 1820 Massa-

¹ Out. Pol. Hist., 441.

chusetts had divided herself to make the state of Maine, and thus balance Missouri, a slave state, and acts of Congress for the admission of both passed in March, 1820.

At the time Michigan applied for admission, Arkansas, a slave Territory, was also seeking admission. The debates upon both bills were bitter and obstinate. The bill to admit Michigan, conditionally, was accorded preference. It passed the Senate by a vote of twenty-four to eighteen, and then the bill to admit Arkansas was at once taken up and passed. In the House of Representatives a session of twenty-five hours was held in debating the bill,—from 10 o'clock Thursday, June 9th, to 11 o'clock Friday, June 10th. The House being in Committee of the Whole on the state of the Union, had twice to rise and report no quorum. The last time, one o'clock in the morning, a call of the House was ordered.¹

Both bills were finally passed and were signed together, June 15, 1836.

Arkansas was admitted unconditionally. Michigan, under condition that she give up the strip of land on the southern boundary claimed by Ohio, taking in place the upper peninsula. The conditions were to be acceded to by a convention of delegates, or Michigan was to remain out of the Union.

There is no space here to detail the facts relating to the dispute concerning the boundary line between Michigan and Ohio. The controversy between the two states, which grew out of it, which brought about as one of its aspects the famous Toledo War, is part of the history of the State.

But Michigan refused to accept admission upon the

¹ Benton's Thirty Years' View, Chap. 138.

conditions named in the act. The feeling of the people against the measure soon found expression. An extra session of the legislature was called, which provided for the election of delegates to the convention, which was ordered to meet at Ann Arbor. The convention refused to accept the conditions imposed by Congress.

What followed is thus described by Judge Campbell : "On the 29th of October, 1836, a Democratic convention of Wayne County expressed a desire for another convention, and this was followed by a similar meeting in Washtenaw. The Governor, in reply to a request, stated there was no time for an extra session of the legislature, and said he had no authority to call a convention ; but he referred to the revolutionary proceedings in the early history of the United States, as quite irregular, and intimated that a popular convention might be recognized at Washington. Thereupon, in pursuance of the Wayne County action, David C. McKinstry, Ross Wilkins, Marshal J. Bacon, John McDonnell, and Charles W. Whipple, called a convention to be held at Ann Arbor on the 14th day of December, and recommended that their action be ratified by the next legislature. Elections were held, from which many of the people absented themselves because they were not lawfully held, and the convention met (familiarily known as the 'Frost-bitten convention'), made up entirely of delegates favorable to admission. They at once, and without ceremony, gave their assent to the conditions, and forwarded their action to Washington. The President laid the case before Congress, and it gave rise to much debate. The validity of the convention was denied, and the matter was considerably delayed. There was a general disposition to admit the state, but not to recog-

nize the irregular action ; and a preamble reciting consent to have been given was strenuously objected to. The bill was finally passed, with a preamble which recited that consent had been given by a convention of delegates, 'elected by the people of the state for the sole purpose of giving their assent ;' and Michigan was admitted on the 26th of January, 1837."¹

QUESTIONS.

Write an abstract of the history of Michigan, under French rule.

Write an abstract of the history of Michigan, under British rule.

Write an abstract of the history of Michigan, under the ordinance of 1787.

Write an abstract of the connection of Michigan with the territory of Indiana.

Write an abstract of Michigan as a separate territory.

Write an abstract of the admission of Michigan as a state.

CHAPTER III.

STATE GOVERNMENT.

State Constitution.²

Like that of all the states, the Constitution of Michigan is a written one, and the form of government therein provided for is a Republican and representative one."

¹ Out. Pol. Hist., 476, 477.

² NOTE.—*The Constitution should be referred to where cited in the text.*

The Constitution is the supreme law of the state. Of course no provision of the state constitution can be valid or binding if opposed or contrary to any provision of the Constitution of the United States.

Our Constitution not only defines the form of state government, dividing the powers and branches of it, but limits the powers of each department, in a manner, and defines and declares rights of the inhabitants of the state.

Further than this it limits the power of the people of the state to amend or change the Constitution itself.

Our Constitution first declares over what territory the jurisdiction of the state government extends.¹

It then declares that the seat of government or the capital of the state shall be at Lansing.²

Then, and following the Constitution of the United States, it provides that the powers of government are divided into three departments—the legislative, executive and judicial,³ and that no person belonging to one department shall exercise the powers properly belonging to another, except in the cases expressly provided in this Constitution.⁴

The present Constitution was adopted by the convention called to revise it, on the 15th day of February, 1850.

It was submitted to the people of the state, who ratified it at the general election in November, 1850.

The Constitution provides that any amendment or amendments thereto may be proposed in either House of the Legislature. If agreed to by two-thirds of the

¹ Art. 1.

² Art. 2.

³ Art. 3, Sec. 1.

⁴ Art. 3, Sec. 2.

members elected to each house, such amendment or amendments shall be entered on the journals of each house, with the vote by yeas and nays by which it was agreed to. It shall be submitted to the electors at the next general election, and if a majority of the electors qualified to vote for members of the Legislature, ratify and approve such amendment, it shall become a part of the Constitution.

At the general election in 1866, and in each sixteenth year thereafter, the question of a general revision of the Constitution shall be submitted to the electors. The question may be so submitted at other times in the discretion of the legislature. If at any time the electors demand a revision, the legislature at its next session is to provide by law for the election of delegates to a convention for that purpose.

An amendment takes effect at the beginning of the next year after its adoption.¹

Unlike the Constitution of the United States, the State Constitution was not intended to make specific grants of legislative power, but to limit a power which would otherwise be general and unlimited, and to impose certain duties upon the departments of government.²

The states are sovereign and independent. Excepting such restrictions upon legislative power as arise out of the Constitution of the United States, there would be none at all, unless provided in the State Constitution.³

The presumptions, then, are all in favor of legislative action. An act of the legislature, however, which is opposed to any provision of the Constitution, is void,

¹ Art. 20.

² Christiancy J. in *Sears v. Cottrell*, 5 Mich., 256; *People v. Blodgett*, 13 Mich., 152.

³ *Ibid.*

and duties imposed by the Constitution upon individuals, officers or bodies, ought to be obeyed. Obedience of inferior officers and bodies may be enforced through the courts, but not the obedience of one of the co-ordinate equal powers of government.

The judiciary can not compel the obedience of the legislative or executive branches of government, no more than those branches can control the decision of a court.

Taking up the several departments in which the powers of government are reposed, in the order mentioned in the Constitution, we have first, and will first consider, the legislative department.

State Legislature.

As in the Federal Government, the legislature of the state is composed of two houses, the Senate and House of Representatives.

These two houses meet in separate apartments, has each its own officers, to some extent a different method of procedure, and there are some powers exercised by each exclusive of the other.

House of Representatives.

The House of Representatives or lower house consists, as at present constituted, of one hundred members or delegates.

These delegates are elected by the qualified electors or voters of the state every two years at the general or fall election. They hold office for two years.

For the purpose of this election the state is divided into representative districts, and from each district a member is elected by the electors of that district.

Each of these districts is required to contain as nearly as may be an equal number of inhabitants, exclusive of Indians not civilized or who belong to a tribe, and to consist of contiguous and convenient territory.

A township or city can not be divided in forming representative districts, but where a township or city is entitled to more than one representative, they are to be elected by a general ticket. An apportionment and division once made must remain unaltered until the return of another enumeration. The addition to a city, by the legislature, of territory contiguous thereto, which, though not intended for that purpose, had the effect to divide a representative district, was held to be unconstitutional, it not having been made at a time allowed by law.¹

Whenever an organized county, with the territory attached to it, has a population equal to one-half the number required to entitle to a representative in the regular ratio of apportionment, it shall be entitled to elect a representative.

The Constitution limits the number of representatives to one hundred. Beginning in 1854, in each tenth year an enumeration or census is required to be taken of the inhabitants of the state. At the first session of the legislature after this enumeration, and also after the enumeration taken under federal authority, the legislature is required to apportion the representatives among the counties according to the population. As the population of the state increases, the result is to give a representative a larger constituency. That is, the districts entitled to a representative will contain a larger number of inhabitants than formerly. Then the boun-

¹ *People v. Holihan*, 29 Mich., 116.

daries of the districts will be changed, since the increase in population will be greater in some localities than in others.

The division into representative districts of those counties entitled to more than one representative, is made by the board of supervisors of the county. They are required to file in the offices of the Secretary of State and clerk of the county a description of the districts, specifying the number of each district and the population thereof according to the last preceding census.

Qualifications of Delegates.—The qualifications are the same for Senators and Representatives. They must be citizens of the United States and qualified voters in the county or district they represent. To be a voter in the district, of course, requires residence there, and a removal of either Senator or Representative from the county or district is a vacating of the office.

No person holding an office under the United States or the State, or any county office, except Notaries Public, officers of the militia and officers elected by townships, are eligible to a seat in either house of the legislature; and all votes given for such persons are void.¹

¹The Constitution makes each House the final judge of the election, qualification, and return of its members.

It has not been an uncommon thing for persons to be elected to the legislature, who, at the time of the election, and until taking their seats, held offices or an office disqualifying them under the Constitution from sitting as delegates, who were allowed to sit, having resigned the disqualifying office. It would seem however, that if the votes cast for them were void, no after resignation of an office could make them valid, and that the evil aimed at by the constitutional provision was in no way reached or to be reached by present provisions.

No collector, holder, or disburser of public moneys shall have a seat in the legislature, or be eligible to any office of trust or profit under the State, until he shall have accounted for and paid over, as provided by law, all sums for which he may be liable.

Disqualifications of Delegates.—The Constitution forbids that any delegate, to either House, shall receive any civil appointment within this state, or to the Senate of the United States, from any state authority, during the time for which he is elected. Nor can any delegate be interested directly or indirectly, in any contract with the state or any county, authorized by any law passed during the time for which he was elected, nor for one year thereafter.

Privileges of Delegates.—Senators and Representatives in all cases except treason, felony, or breach of the peace, are privileged from arrest. They are not subject to any civil process during the sessions of the legislature, and for fifteen days next before the commencement and after the termination of sessions. They shall not be questioned in any other place for any speech made in either house.

Compensation of Delegates.—Delegates receive three dollars per day for actual attendance upon the sessions of the legislature, and when absent on account of sickness, and ten cents per mile for distance actually traveled, going to and returning from the place of meeting, on the usually traveled route.

For extra sessions they are paid three dollars a day for the first twenty days, and nothing thereafter.

Impeachments.—The House of Representatives has the sole power of impeaching civil officers for corrupt conduct in office, or for crimes and misdemeanors; but a majority of the members elect are necessary to direct an impeachment.¹

When an impeachment has been ordered three members of the House of Representatives are selected by the

¹ See ante, p. 40.

House to prosecute the impeachment. Impeachments are tried by the Senate. When the Governor or Lieutenant Governor is tried, the Chief Justice of the Supreme Court presides. A vote of two-thirds the Senators elect is necessary to a conviction.

Officers of the House of Representatives.—Each House chooses its own officers, and determines the rules of its proceedings. The officers of the House of Representatives are a presiding officer or Speaker, as he is called, who is chosen from the members elect, and has a vote upon all questions. A Speaker *pro tempore*, to officiate in the absence or disability of the Speaker; a Clerk, whose office is an important one and who is called Clerk of the House; a Sergeant-at-Arms, who is to the House what the Sheriff is to the Circuit Court. Besides these, which are the principal offices, there are chosen a journal clerk, an enrolling and engrossing clerk, a door keeper, keeper of the cloak-room, and some other officers, besides the pages or messenger boys. Most of the principal officers have assistants, one or more, sometimes chosen by the House and sometimes appointed by the principal officers.

The names of most of these officers suggest the duties of the office. The office of Speaker is, of course, the principal office in the lower House. Besides the duties as presiding officer, the Speaker, as in the lower House of Congress, has the appointment of members to the various committees of the House. The Speaker receives no greater pay than other members of the legislature.

The Senate.

The Senate consists of thirty-two members or delegates elected from as many districts.

Senatorial districts are numbered from one to thirty-two, inclusive. These districts, after the enumeration of inhabitants are arranged by the legislature.¹

The qualifications of Senators and Representatives, their disqualifications, salaries and privileges, are the same. They are elected at the same election and serve the same term. Bills may originate in either house.

¹ By Act No. 253, Laws of 1881, the legislature divided the State into senatorial districts, as follows: *First District*—The fifth, seventh, ninth, eleventh and thirteenth wards of the city of Detroit, and the townships of Grosse Pointe, Hamtramck and Greenfield in the county of Wayne. *Second District*—The first, second, third, fourth, sixth and eighth wards of the city of Detroit. *Third District*—The tenth and twelfth wards of the city of Detroit, and the townships of Plymouth, Canton, Van Buren, Sumpter, Huron, Romulus, Nankin, Livonia, Redford, Dearborn, Taylor, Brownstown, Monguagon, Ecorse and Springwells, and the city of Wyandotte, in the county of Wayne. *Fourth District*—The county of Washtenaw. *Fifth District*—The county of Monroe. *Sixth District*—The county of Lenawee. *Seventh District*—The county of Jackson. *Eighth District*—The county of Calhoun. *Ninth District*—The counties of Hillsdale and Branch. *Tenth District*—The counties of Kalamazoo and St. Joseph. *Eleventh District*—The counties of Berrien and Cass. *Twelfth District*—The counties of Van Buren and Allegan. *Thirteenth District*—The counties of Barry and Eaton. *Fourteenth District*—The counties of Ingham and Clinton. *Fifteenth District*—The county of Oakland. *Sixteenth District*—The counties of Macomb and Lapeer. *Seventeenth District*—The county of St. Clair. *Eighteenth District*—The counties of Sanilac and Huron. *Nineteenth District*—The county of Genesee. *Twentieth District*—The counties of Livingston and Shiawassee. *Twenty-first District*—The counties of Ionia and Montcalm. *Twenty-second District*—The county of Kent. *Twenty-third District*—The counties of Ottawa and Muskegon. *Twenty-fourth District*—The counties of Gratiot, Clare, Isabella and Midland. *Twenty-fifth District*—The county of Saginaw. *Twenty-sixth District*—The counties of Mason, Lake, Newaygo and Oceana. *Twenty-seventh District*—The counties of Mecosta, Osceola, Wexford and Manistee. *Twenty-eighth District*—The counties of Grand Traverse, Benzie, Leelanaw, Manitou, Antrim, Charlevoix, Kalkaska, Missaukee and Emmet. *Twenty-ninth District*—The counties of Cheboygan, Presque Isle, Montmorency, Alpena, Otsego, Crawford, Oscoda, Alcona, Iosco, Gladwin, Roscommon and Ogemaw. *Thirtieth District*—The counties of Bay and Tuscola. *Thirty-first District*—The counties of Marquette, Menominee, Delta, Schoolcraft, Chippewa and Mackinac. *Thirty-second District*—The counties of Houghton, Ontonagon, Baraga, Keweenaw and Isie Royal.

Officers of the Senate.

The Lieutenant Governor of the State is the presiding officer of the Senate. His duties are similar to those of the Speaker of the lower house. A president *pro tem.* is elected, who presides in the absence or disability of the President of the Senate, and when he is called upon to act as governor of the state. In committee of the whole the President of the Senate may debate all questions, and when there is an equal division he gives the casting vote.

His pay is the same as that of Senators.

The Secretary of the Senate performs the same duties that are performed by the Clerk of the House of Representatives. He is elected by the Senate, as also are the journal clerk, enrolling and engrossing clerk, and, many times, their assistants. There is, as in the other House, a sergeant-at-arms, with assistants, doorkeepers, keeper of the cloak-room, pages, and other officers, and employés.

Organization of the Legislature.

The members elect of the Senate and House meet at Lansing, at the capitol, in their respective houses, at twelve o'clock noon on the first Wednesday in January succeeding their election.

If the Lieutenant Governor is absent the Secretary of the preceding Senate calls the Senate to order, and presides until the Lieutenant Governor appears, or a President *pro tempore* is elected. The same duties are performed in the House by the Clerk of the preceding House, he presiding until a Speaker or Speaker *pro tempore* has been elected. These officers call the roll of each House from the list furnished them by the Secretary of State.

Powers of the Legislature.

We have already said that, subject to the restraints and checks upon legislation which come from the Federal Constitution and from the Constitution of the state, the legislature of the state has all legislative power.

We will then briefly, under this head, note some of the limitations which the state Constitution imposes. Some and many of these are in the interest of regular and ordinary proceeding. Among these are provisions that a majority of either House may do business, which is an implied prohibition upon the conducting of business by any less number; each House shall keep a journal of its proceedings and publish the same, except such parts of it as may require secrecy; the doors of each House shall be open unless the public welfare requires secrecy; neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than where the legislature may then be in session; every bill and joint resolution shall be read three times in each House before its final passage; no bill or joint resolution can become a law without the concurrences of a majority of all the members elected to each House; on the final passage of all bills, the vote must be by yeas and nays, and entered on the journal; no law shall embrace more than one object, which shall be expressed in its title; that no new bill be introduced after the first fifty days of the session; no public act shall take effect or be in force until the expiration of ninety days from the close of the session at which it is passed, unless otherwise directed by a vote of two-thirds the members elected to each House.

All the foregoing might be classed as duties imposed by the Constitution upon the legislature. Yet there are

few of them which are not, in a sense, limitations upon legislative powers; not powers over subjects of legislation, but powers to legislate at all.

But there are many subjects concerning which the legislature is forbidden to pass laws.

They are forbidden to authorize by private or special law the sale or conveyance of any real estate belonging to any person.¹

The legislature is forbidden to vacate or alter any road laid out by commissioners of highways, or any street in any city, village or recorded town plat;² to grant divorces; to authorize any lottery, or permit the sale of lottery tickets; to audit or allow any private claim or account; to establish a state paper; to pass any law to prevent any person worshiping God according to his own conscience, or to compel any person to attend or support any place of worship, or pay any tithes or taxes for the support of any minister of the gospel or teacher of religion; to appropriate money or property belonging to the state for the benefit of any religious society; to diminish or enlarge the civil or political rights, privileges and capacities of any person on account of his opinion or belief concerning matters of religion.

The legislature is forbidden to pass a bill of attainder, *ex post facto* law, or law impairing the obligation of contracts.³

¹ It has been held that an act authorizing a corporation to mortgage its property was not in conflict with this statute, the act amounting to an amendment of the charter of the corporation granting the power. *Joy v. J. & M. P. R. Co.*, 11 Mich., 155.

² But this does not apply to state or territorial roads. *People v. Supervisors of Ingham*, 20 Mich., 95.

³ Art 4, Sec. 43. See notes 1 and 3, p. 45, ante.

In Michigan, under this section, the doctrine is affirmed that the provision in regard to *ex post facto* laws, which is the same as in the Const. U. S., refers only to criminal offenses and causes. *Scott v.*

All these provisions here noted can, of course, be read by any one who will take the trouble to examine the Constitution. They are placed here to call especial attention to them as limitations which the people of the state have themselves placed upon the legislative power.

With the prohibited subjects and matters the legislature is not to meddle, and the business of legislation must be carried on in a regular and orderly manner, and so publicly and such record made of it, that the people may at any and all times ascertain what their representatives are doing.

The Constitution fixes the day of the election of Senators and Representatives on the Tuesday succeeding the first Monday of November, and provides that the legislature shall meet at the seat of government on the first Wednesday in January, and shall, on the day of final adjournment, adjourn at twelve o'clock, noon.

Election of United States Senators.—One of the important duties devolving upon the legislature is the choosing of Senators to the Congress of the United States.

Smarts executors, 1 Mich., 302. In regard to the clause prohibiting any law impairing the obligation of contracts, the Supreme Court of Michigan have had occasion to consider it in a number of causes. In construing its application in the cases that have come before the court, it has been held that the remedy for breach of a contract was no part of the contract: 2 Douglass, 197; 1 Mich., 68; 2 Douglass, 38; 1 Douglass, 373; 13 Mich., 23; but that a law cutting off all remedy where a cause of action had accrued, was a law impairing the obligation of contracts: 2 Douglass, 38; acts increasing exemptions do not impair: 2 Doug., 197; 37 Mich., 217; nor acts abolishing imprisonment for debt: 37 Mich., 27; nor acts changing limitations of time within which to bring actions: 2 Doug., 197; 1 Doug., 173. But a law which has the effect to change the conditions, time or manner of performance of a contract, as expressed in the contract, or which imposes conditions not contained in the contract, is a law impairing the obligation of a contract: 1 Mich., 68; so a law shortening the time for redeeming from a sale under mortgage foreclosure is invalid as to mortgages previously executed. 1 Mich., 369. See also 11 Mich., 252; 30 Mich., 380.

Section 4 of Article I of the Constitution of the United States provides that the times, places, and manner of holding elections for Senators shall be prescribed in each state by the legislature thereof, but that Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

Congress has passed a law¹ providing the time and manner of election. The act of the state legislature² is a repetition of the act of Congress. The requirements of law are, in substance, that that legislature chosen next preceding the expiration of the time for which any Senator was elected, shall choose a successor. The legislature for this purpose is required to meet on the second Tuesday after meeting and organizing. In each House, sitting by itself, each member, by *viva voce* vote, names one person for Senator, and the name of the person so voted for, who has a majority of the whole number of votes given, is entered on the journal by the secretary or clerk, and if no person receives a majority on that day that fact is entered on the journal.

At twelve o'clock noon on the following day, the Houses meet in joint convention, and the journals of the two Houses are read. If the same person has received a majority of the votes in each House, he is declared elected. If not, or if either House has failed to take proceedings as required, the joint convention proceeds to elect a Senator. The rolls of each House are called, and the members vote *viva voce* for some person for Senator, and if any person receives a majority of the votes of the convention, he is declared elected, provided

¹ Act July 25 1866; Rev. St. U. S., 2d Ed., p. 3.

² Howell's Stat. Chap. 6. It will be seen, Congress having acted upon this matter, that the proceedings are the same in each state.

a majority of members elected to each House are present and vote. If no choice is made, the legislature meets in joint convention at noon of each succeeding day during the session and takes at least one ballot, until a Senator is chosen. If when any legislature meets there is a vacancy in the office of Senator, that legislature elects a Senator to fill the vacancy, pursuing the manner of electing as above described.

Upon the election of a Senator the Governor certifies his election to the President of the Senate of the United States, the certificate being countersigned by the Secretary of State under the state seal.

As matter of practice, the members of political parties in the two Houses, meet at some time before the day of voting for Senator, in caucus. Each party nominates a man, in the caucus, as a candidate for the office. If one party has a majority in the legislature, a nomination in caucus is equivalent to an election in the convention, provided the members of the dominant party are pleased with or abide by the caucus nomination. Sometimes the caucus is not harmonious, the same party having several candidates for the office, and often a prolonged struggle ensues before a satisfactory person is chosen.

Apportionment of Representatives in Congress.

Another important duty to be performed by the legislature is the division of the state into congressional districts. By act of Congress of February 25, 1882, it was provided that the House of Representatives in the Congress of the United States should be composed of three hundred and twenty-five members, and that whenever a new state was admitted its representation should be in addition to that number.

Under this apportionment Michigan became entitled to eleven representatives in Congress.¹

As at present divided the first district consists of the county of Wayne ; second, of the counties of Monroe, Lenawee, Hillsdale, and Washtenaw ; third, of the counties of Jackson, Calhoun, Branch, Barry, and Eaton ; fourth, of the counties of Berrien, Cass, St. Joseph, Kalamazoo, and Van Buren ; fifth, of Allegan, Kent, Ottawa, and Ionia ; sixth, of Clinton, Ingham, Livingston, Genesee, and Oakland ; seventh, of Macomb, St. Clair, Lapeer, Sanilac, and Huron ; eighth, of Shiawassee, Saginaw, Gratiot, Montcalm, Isabella, and Midland ; ninth, of Muskegon, Oceana, Newaygo, Mecosta, Osceola, Lake, Mason, Manistee, Wexford, Charlevoix, Missaukee, Antrim, and Kalkaska ; tenth, of Tuscola, Bay, Gladwin, Clare, Roscommon, Ogemaw, Iosco, Crawford, Oscoda, Alcona, Alpena, Montmorency, Otsego, Presque Isle, Cheboygan, and Emmet ; the eleventh, of Grand Traverse, Benzie, Leelanaw, Manitou, Mackinac, Chippewa, Schoolcraft, Delta, Menominee, Marquette, Houghton, Baraga, Keweenaw, Isle Royal, and Ontonagon.

Judicial Circuits.—The legislature divides the state into judicial circuits. This subject will, however, be spoken of under the head of the judiciary.

QUESTIONS.

What kind of constitution and what form of government has Michigan ? What is a Republican form of

¹ Act No. 33, Laws of 1843, divides the state into three districts.

Act No. 164, Laws of 1851, divides it into four districts.

Act No. 181, Laws of 1861, divides it into six districts.

Act No. 44, Laws of 1872, divides it into nine districts.

Act No. 21, Laws of 1882, divides it into eleven districts.

government? What do you understand by *representative*? What is the supreme law of the state? What does this instrument do? Over what territory has the state government authority? Where is the seat of government?

How many departments of government, and what are they? Can the same person exercise the powers of more than one of these departments? What exceptions are there? When was the present Constitution adopted? By whom was it adopted? How can it be amended? When can it be amended? Who determine when it shall be amended? When does an amendment take effect? Is the state Constitution like that of the United States in respect to granting powers? What is the difference?

Suppose an act of the legislature is opposed to the Constitution, what force can it have? Is there any presumption regarding the constitutionality of laws? How is obedience to the Constitution compelled? Can one department of government control another? What is the state legislature? Tell how it is made up? Where do the Houses meet? Have they the same procedure? What is the House of Representatives? Describe it and how composed? For what time, and how, are delegates elected?

Tell about representative districts and how they are formed? If a county is entitled to more than one delegate, how is the county divided into districts? How many Representatives can there be in all? How is this fixed? Can it be changed? How? How are Representatives apportioned among the counties? Upon what basis? Do district boundaries have to be changed? Why? What effect does a limited number of delegates

have in a growing community? What are the qualifications necessary for a delegate? Name the disabilities? Give the substance of note 9? State for what delegates are disqualified? Name the privileges of delegates? Compensation? What is an impeachment? Where is the power, in Michigan, to impeach? Tell what you can about the practice when an impeachment is ordered? What officers has the House of Representatives? How many members are there in the Senate? For how long elected? How are Senators apportioned? What authority apportions them? What officers has the Senate? Tell what you can of the duties of each? Tell when and how the legislature is organized?

What powers has the legislature?

What limitations are there upon the power? Where are these limitations found? Name the limitations upon legislative power and proceedings, and give the reasons for each?

Tell some kinds of laws it is forbidden to make? When are Senators and Representatives elected? How is the time of election fixed?

Tell how a United States Senator is elected?

How are Representatives in Congress apportioned?

In what congressional district do you live?

What is the name of the Congressman from your district?

What is the number of your senatorial district?

What is the name of the Senator from your district?

How many Congressmen is Michigan entitled to?

CHAPTER IV

THE EXECUTIVE.

The executive power is vested in a governor. “He shall take care that the laws be faithfully executed.”¹

No member of Congress, nor any person holding office under the United States, shall execute the office of Governor.

The Governor must be thirty years old, must have been a citizen of the United States five years, and of this state two years preceding his election. He is elected, with the Lieutenant Governor, at the same time and places of choosing members of the legislature. He holds office for two years, and receives a salary of one thousand dollars per annum. If two or more persons have received an equal number of votes for Governor or Lieutenant Governor, the legislature by joint ballot choose one of the number.

Duties.—One of the important duties of the Governor is to approve the laws which have received the assent of the legislature. If he approves them he signs them. If he does not approve them, he has the power to *veto* them, refusing his signature and returning them to that branch of the legislature in which they originated, with his reasons for his action. As is the case where the President of the United States vetoes a bill or act of the legislature, the legislature may pass the law notwithstanding the veto. The rule is the same in the Federal

¹ Art. V., Sec. 6.

and state governments concerning the executive approval of acts of the legislature.

He is commander-in-chief of the military and naval forces of the State, and may call out such forces to execute the laws, to suppress insurrections and to repel invasions.

He may convene the legislature on extraordinary occasions, and is required to give to the legislature at the close of his official term, information by message of the condition of the state, and recommend to them such measures as he shall deem expedient. In case of a vacancy in the Senate or House of Representatives, he orders a new election. This is called issuing a writ of election. All commissions issued to persons holding office under the provisions of the Constitution are signed by the Governor. Except in cases where conviction has followed the charge of treason, and in impeachment cases, the Governor may issue reprieves, commutations and pardons. And he may attach to the pardons or commutations such restrictions and limitations as he may think proper. Thus he may pardon a man sentenced to the state prison on conviction for a felony, upon condition that he abstain from the use of intoxicating liquors. The Governor is required to communicate to the legislature at each session, information concerning all such cases, giving the reason for his action.

In case of a conviction for treason, which is the only crime punishable with death, the Governor may respite the offender until the case has been laid before the legislature at its next session, and the legislature may either pardon, commute the sentence, direct the execution of it, or grant a further reprieve.¹

¹Treason against the state, to which, of course, this refers, consists

Appointments.—The Governor is vested with authority to appoint, in many cases, persons to fill vacancies in office. He may so appoint judges of the Supreme, Circuit, and Probate Courts, and such appointments continue until a successor is elected and qualifies. In case of a vacancy in any State office, he appoints a successor by and with the advice and consent of the Senate, if in session.

Other State Officers.

While the Constitution places the executive power in the hands of the Governor, it also provides for certain elective offices, the duties of each of which to some extent are executive, and belong, as compared with other departments of the Government, to the executive department. There are also certain boards, having constitutional functions, in the exercise of which their determination is final.

These elective officers are: Secretary of State, Superintendent of Public Instruction, State Treasurer, Commissioner of the Land Office, Auditor General and Attorney General. These officers are elected for two years, at the general election. Their offices are at the seat of government, and they are required to perform such duties as may be prescribed by law. Let us see, briefly, what duties the legislature has imposed on each.

Secretary of State.

It may be said that in this office are to be and are kept the state records. The original acts of the legislature are kept by this officer, and he is required to publish them. He has the custody of the great seal of state.

only in levying war against it, or in adhering to its enemies, giving them aid and comfort. Art. VI., Sec. 30.

All patents of state lands and all commissions to appointed state officers, are made out in this office and certified by the Secretary under seal of the state. A record of deeds and other evidences of title in the state is kept in this office. The labor of compiling and publishing the vital statistics of the state, and of preparing and furnishing blank forms to various officials for reports to be made to the office, is done here.

Records are kept of the votes cast at state elections, of reports of corporations, of the articles of incorporation of the numerous corporations organized in the state, private and public, and a vast number of societies and corporations are required to file in this office the statements and reports required by law. The Secretary of State delivers a list of the members elected to the state legislature to the Secretary or assistant secretary of the preceding Senate, and to the clerk or journal clerk of the next preceding House of Representatives, as transmitted to him by the clerks of the several counties. It is not possible to go into details. The statutes of the state must be consulted to ascertain the duties of this office. His salary is eight hundred dollars a year. He has a deputy. No fees or perquisites are allowed for performing any of the duties of the office.

Superintendent of Public Instruction.

Has the general supervision of public instruction, appoints board of visitors to the university and visitors to other institutions of learning, is required to himself visit institutions of learning, to compile and publish the school laws, with forms, etc.; to furnish county clerks with statement of the townships entitled to library moneys and to furnish list of books to persons in charge

of township and district libraries. He apportions the primary school interest fund among the several townships and cities of the state. The total amount to be distributed he learns from the Auditor General. This he distributes according to the number of children between the ages of five and twenty years, as appears from the reports made to him for the preceding year by the boards of school inspectors. He prepares for the Auditor General a statement showing the aggregate amount apportioned to each county, for which the Auditor General draws his warrant, in favor of the respective county treasurers, upon the State Treasurer.

He also sends to the clerk of each county a statement of the aggregate amount apportioned to each township and city therein.

The Superintendent is required to make to the Governor an annual report.

See, generally, for a statement of the duties of this office, Chapter 196 of Howell's Statutes.

His salary is one thousand dollars.

State Treasurer.

Has the custody of the state moneys. He is required to give a bond in the sum of one hundred and fifty thousand dollars. On the first Tuesday of each month, and at such other times as the Auditor General requires, he is required to exhibit to the Auditor General and Commissioners of the Land Office the moneys in the treasury, with a true statement of receipts and moneys paid out.

He is required also to report to the legislature, at each session, and more often if required by either branch of the legislature, an exact statement of the balance in the

treasury to the credit of the state, with a summary of his receipts and disbursements for the year. This statement is published with the laws of the session at which it is made. The salary of this officer is one thousand dollars.

Commissioner of the State Land Office.

In this office is transacted the largest part of the business relating to the lands of the state. Sales are made, and moneys therefor are received. Records of state lands and of lands sold and to whom, are kept. Interest and taxes upon lands sold but not fully paid for, and held on certificates, are paid here.

The Commissioner has general charge and superintendency of these matters under the acts of the legislature.

Plats of lands owned by the state and for sale by it, with prices, etc., can be had at this office. It is the place to apply to purchase state lands, to pay taxes or interest on part-paid lands, and to full pay part-paid certificates.

It is not possible to specify all the duties of the office, and the statutes must be consulted. The salary is eight hundred dollars.

Auditor General.

This officer keeps the account between the state and the state treasurer. No moneys can be paid out of the treasury except upon his warrant, and a receipt for all moneys paid into the treasury must be taken to him to be countersigned. He is required to state all accounts, and to examine and liquidate claims of persons against the state. Claims which can not be liquidated by him or by the board of state auditors, without further legislative

provision, he is required to report to the legislature with his opinion. He is also required to make to the legislature at its sessions a complete statement of the funds of the state, and of the revenue of the state, of the amount of salaries of officers of the Government, and of all contingent expenses, and appropriations for the year previous, and recommend such improvements in the financial system of the state as he thinks expedient. He instructs those persons employed in the collection of the state revenues. His instructions, certified by the Attorney General, are binding upon such officers.

A large part of the business of this office is connected with the levying and collecting of taxes.

To understand these duties properly, the tax laws of the state must be read. Delinquent taxes are returned here by the county treasurers, and can be paid at this office, after such return, for a given period. Under the new tax law of 1882, as under the old law, lands upon which taxes were unpaid are returned to this office, and after the interval provided for payment, are sold in the different counties by the county treasurers, for the unpaid taxes. Formerly this sale took place after a certain advertisement of the lands made in newspapers of the several counties by the Auditor General, after which sale there was a time given the owner to redeem from the sale. At the sale, lands not sold to individuals were sold the state, and were by the state kept for sale, after the time for redemption, and were each year offered at the county sales. Now, under the provisions of the new law, a chancery proceeding against lands delinquent for non-payment of taxes is begun in the Circuit Courts of the different counties.

A decree is taken if there is no contest, and the lands

are then sold under the decree of the court. The first sale under this law was for the taxes of 1881, and occurred in May, 1884.

Keeping records of lands delinquent for taxes, of sales of such lands by county treasurers, and by the Auditor General, employs the time of a large number of clerks. A tax history can be obtained at the office of any land in the state. Another important duty of this office is to apportion among the several counties the amount each is required to raise of the state tax.

Attorney General.

Is the law officer of the state. He prosecutes and defends in the Supreme Court all actions to which the state is a party, and, upon the request of the various state officers, prosecutes and defends all suits concerning their departments. He is to consult with, and give his opinion upon questions of law submitted by, the legislature or the state officers.

His salary is eight hundred dollars.

Boards and Appointive Officers.

Besides these elective officers, there are many others required in carrying on the business of the state. The duties of most of them are ministerial simply. There are also certain boards of public officers. These will first be given.

Board of State Auditors.—One of the most important of state boards is that of state auditors.

The Constitution has vested this board with two functions only, that of determining claims against the state, and canvassing the votes for certain officers. Their determinations in these matters are final. (See Board of State Canvassers.) With respect to these

matters the board is a separate, independent tribunal, and exercises original and exclusive jurisdiction. Its action is subject to no review or interference from the courts. All claims against the state for which no other provision is made by law, must come before this board and be examined and adjusted by it.

The state cannot be sued. Yet it has of necessity to purchase supplies, to employ help, and pay reasonable and just compensation to its creditors.

This board is established for the purpose of settling all such claims. Unless there is some other mode of settlement or liquidation provided in particular cases, all claims of state officers and agents are examined and adjusted by this board.

For this purpose the board meets at nine o'clock on the last Wednesday of each month at the office of the Secretary of State.

The board has authority to issue subpoenas for necessary witnesses, and may compel attendance before it by attachment, just as a court could. Witnesses are allowed fees, which are paid out of the state treasury. Any member of the board may swear a witness. When claims are allowed by the board they are paid out of the state treasury on the warrant of the Auditor General. This board is required to submit to the legislature a report of all its doings.

State Board of Equalization.—The sole function of this board is the equalization of the assessed valuation of the different counties of the state for the purpose of apportioning among them a relatively equal proportion of the state tax. In each county, in June, every five years, the board of supervisors meet and equalize the valuation of wards and townships.

The result of their action is laid before this board, which then proceeds at its meeting at Lansing, on the third Monday in August in every fifth year, to examine the returns and by comparison, and from information derived from the statistics of the state, and other sources, determine whether the relative valuation of counties, as appears from the returns, is equal, and the personal estate uniformly assessed. If they find valuations relatively unequal, they add to or deduct from the aggregate valuation of each county as equalized by the board of supervisors such percentage as will, in their opinion, make these valuations relatively equal. The result of their labors stands as the basis for the apportionment of the state tax by the Auditor General until another state equalization. The Lieutenant Governor, Auditor General, Secretary of State, State Treasurer and Commissioner of the Land Office constitute the board.

Board of Regents.—Have the general management of the University. There are eight of them, elected for eight years each at the spring election, two each year.

State Board of Agriculture.—Have the general management of the moneys appropriated to the State Agricultural College and of the College. There are six members, appointed by the Governor, by and with the consent of the Senate, two each year. The Governor and President of the Agricultural College are members by virtue of their offices. This board is a body corporate, capable of suing and being sued.

State Board of Education.—Three members, elected one each two years at the general election. They hold office for six years. It has charge of the State Normal School and control of moneys appropriated for it. This

board is a body corporate, examines and grants certificates to teachers.

Board of State Canvassers.—The Secretary of State, State Treasurer and Commissioner of the State Land Office constitute this board.

The Secretary of State appoints a meeting at his office, on or before the 15th day of December next after a general election, and within forty days after a special election, and gives notice to the members of the board to attend. Two of them constitute a quorum. They determine the results of elections for state offices, for electors for President and Vice-President of the United States, and upon amendments to the Constitution, from the returns made to the office of Secretary of the State by each county clerk. But for the purpose of canvassing votes for electors, the board meets on the Wednesday next after the third Monday in November, or on such other day before that time as the Secretary of State may appoint.

For the purpose of canvassing the result of the vote on any constitutional amendment, the board meets on or before the 20th day of the month succeeding the election.

Their determination of the results of any election submitted to their decision is final.

State Board of Health.—Seven members, of whom six are appointed by the Governor by consent of the Senate. The board thus appointed elects a secretary, who by virtue of such election becomes a member of the board.

The health physician and the clerk of the local board of health of each township, city and village in the state, are required at least once in each year to report to the state board their proceedings, upon blanks furnished by the

board, and are also required to make special reports whenever required. This board is given charge and supervision of matters affecting the health and life of the citizens of the state. The board meets quarterly at Lansing.

Board of Fish Commissioners.—Three, appointed by the Governor. Hold office six years. Duties to select a suitable place for a state fish hatchery, and appoint a superintendent of fisheries to obtain the ova from food fishes for the purpose of hatching and distributing fish in the streams of the state. The superintendent has charge of the hatchery. These are the important state boards.

Appointive Officers.

Adjutant General.—Is appointed by the Governor, by and with the advice and consent of both Houses of the legislature in joint convention. Holds office for two years. Gets one thousand dollars yearly salary. In the state militia he ranks as brigadier general. He prepares each year for the Governor a return of the state militia, showing numerical strength, with all arms, equipments and military stores of the state. A considerable number of duties relating to the military, arms and military stores are imposed by law.

State Librarian.—Has sole care and charge of the state library at the Capitol in Lansing, and all affairs pertaining thereto. Is appointed by the Governor, by and with the consent of the Senate. Salary, one thousand dollars per annum. Term of office, two years.

Commissioner of Emigration.—Appointed by the Governor, at salary of two thousand dollars per annum, to encourage emigration to Michigan from other states and from Europe, to act under the advice and direction

of the Governor. The Governor is also authorized to appoint an assistant commissioner at a salary of not exceeding fifteen hundred dollars a year.

Commissioner of Railroads. — Appointed for two years by the Governor, by and with the advice and consent of the Senate. Gives bonds in the sum of ten thousand dollars. Holds office two years. Salary twenty-five hundred dollars. Incidental expenses of office, and actual cash outlay for railroad fares paid by the board of state auditors. Commissioner appoints a deputy at salary of one thousand dollars.

This officer receives a yearly report from all railroad companies doing business in the state, of the officers, capital stock, miles of track and sidings, tons of freight carried, passengers carried, earnings and expenditures, with the source and object of each.

Commissioner is authorized to examine the books of any company, to ascertain the condition and management of all matters connected with railroads in the state. Examine the tracks, bridges and rolling stock of railroad companies, to see if they are safe. May order flagmen stationed at street crossings, or direct the erection and maintenance of a bridge or gate at any highway, street or railroad crossing or intersection. He may require a company to furnish sidings and track accommodations, for villages of one hundred and fifty inhabitants and upwards, and having a post office, which are two miles or more from a railroad station and not more than one-half mile from the railroad. On or before the 25th of each month, every railroad company doing business in this state is required to report to the Commissioner of Railroads its earnings from every source for the preceding calendar month.

Upon these reports is figured the specific taxes to be paid the state upon the earnings of the roads.

The Commissioner figures this according to the percentage fixed by law, and transmits his computation to the Auditor General. The tax is due the first of July of each year upon the business of the road for the preceding year.

Bureau of Insurance.—By act of the legislature, passed in 1871, there was established in the state department a separate and distinct bureau, which is specially charged with the execution of the laws in relation to insurance; fire, life, marine and all other kinds and methods of insurance. The chief officer of this bureau is the Commissioner of Insurance. He is appointed by the Governor, by and with the advice and consent of the Senate. Salary, two thousand dollars. Gives a ten-thousand dollar bond. Has a seal of office. Too much space would be occupied in stating the duties of this officer. Generally stated, he has authority to see that all insurance companies doing business in the state obey its laws. For this purpose and for the purpose of state taxation the insurance companies are required to make reports to him, showing business performed, in what manner, and premiums received.

QUESTIONS.

Where is executive power vested? Duty of executive generally? What officers can not be? Qualifications necessary? When elected? Term of office? Salary? When does the legislature choose?

What about the Governor's approval of laws? Is it necessary?

What command has the Governor in the militia?

Extra sessions? New elections? Commissions? Reprieves and pardons? Conditional pardons? What information is given of exercise of the pardoning power? What action may the executive take in case of conviction for treason? What is treason against the state?

What can you say about the appointing power?

Write an abstract of what is given under the head of "Other State Officers." Name the other elective state officers?

Tell what you can about Secretary of State. About the Superintendent of Public Instruction? State Treasurer? Commissioner of the State Land Office? Auditor General? Attorney General? Board of State Auditors? State Board of Equalization? Board of Regents? Agriculture? Education? Canvassers? State Board of Health? Adjutant General? State Librarian? Commissioner of Emigration? of Railroads? Bureau of Insurance?

Write an abstract of the duties of each state officer and board.

CHAPTER V.

THE JUDICIAL POWER.

The judicial power is the authority to hear and decide controversies, and to make binding orders and judgments. By our Constitution this power is vested in one Supreme Court, in Circuit and Probate Courts, and in justices of the peace.

Municipal courts of civil and criminal jurisdiction are

also provided for, and also the election of certain persons having *quasi-judicial* powers. What is a court? It has been defined as a body in the Government to which the public administration of justice is delegated. Within the meaning of the Constitution it is a *permanent* organization for the administration of justice. A common and essential feature of all courts is a judge or judges. Indeed, in common talk, the judge or judges are spoken of and to as the court. Courts have dignity and importance proportioned to the jurisdiction exercised by them. Jurisdiction is limited territorially and by subjects. It is one of the attributes and rights of the sovereign power, everywhere, to create such tribunals, and with such powers and jurisdiction as may seem best. In this country the people may exercise this power or delegate it to the legislature. In Michigan the people have named the courts, and, quite minutely, the powers and jurisdiction of each.

Jurisdiction: Territorial.—As an act of the general legislature can have no force or effect outside of state limits, or a resolution of the board of supervisors does not operate beyond the county, so territorial boundaries limit the jurisdiction of courts. The process of the highest court in the state can not run into another state, neither can the judgment or decree of any court affect persons or property outside the jurisdiction of the court. For example: A person committing a crime against the state of Indiana, as a felony committed in that state, can not be prosecuted in Michigan courts. A mortgage given upon land in Ohio can not be foreclosed in Michigan, nor could an action to recover possession of a Michigan farm be tried in Ohio. This limitation upon the jurisdiction of courts is based upon the principle

which has been given heretofore, that as between themselves states are independent sovereignties; over the persons or property of the inhabitants of each, no other state can acquire or exercise any jurisdiction or control, directly or indirectly. But if A recovers, in Michigan, a judgment of one thousand dollars against B, and B removes to Ohio or any other state, and it is desired to enforce collection of the judgment there, suit in such state may be brought on the claim, and the record of the judgment of the Michigan court may be offered in evidence and will be received in evidence in the Ohio court. That court will only inquire if from the record it appears that the Michigan court had jurisdiction of the person of the defendant and of the subject matter of the suit. The Congress of the United States provided for this by a law requiring full faith and credit to be given in each state to the judgments and decrees of the courts of every other state. But there are territorial limitations upon the jurisdiction of courts other than state boundary lines. Municipal courts, like the Superior Courts of Detroit and Grand Rapids, have no jurisdiction over persons residing outside the city. There is also a limitation upon courts of general jurisdiction in criminal cases, the principle of which is older than any of our constitutions. It is that which requires that a person accused of a crime shall be tried in the country in which the crime is committed. Territorial limitations upon the jurisdiction of justices courts and circuit courts will be better considered under the description to be given of these courts.

Probate courts, being courts with jurisdiction over things, property, rather than over or relating to persons, exercise jurisdiction, as will be seen, within the several counties only.

Jurisdiction; Persons.—We shall also see, when we examine the structure and workings of each court, that jurisdiction over the persons of individuals must be acquired in order to bind them by the judgments and decrees of a court. This jurisdiction is acquired by the service upon individuals of the process of the court. Service must generally be made within the jurisdiction, territorially, of the court. It is a generally accepted rule that the service of process within the jurisdiction does not always confer jurisdiction of the person. For example, a person arrested in one state and extradited, can not be carried on criminal process into another state, and, while held, or after discharge, without a reasonable opportunity to leave, be served with criminal or civil process so as to obtain jurisdiction of his person.

Jurisdiction may be acquired over property lying within the jurisdiction of the court, when owners live beyond reach of process.

Jurisdiction: Subject Matter.—Jurisdiction is limited by subjects. All courts do not have jurisdiction in the same classes or kinds of cases. Under this head may be included the division in jurisdiction which depends upon the amount in controversy.

General and Inferior and Special Jurisdiction of Courts.—Depending upon some or all of these jurisdictional limitations, courts are sometimes classed as courts of general, inferior and special jurisdiction. A Municipal Superior Court in Michigan has a limited jurisdiction, justices courts and courts held by Circuit Court Commissioners are examples of inferior courts.

All the judicial power of the state is vested in the courts and officers named in the Constitution. Let us

examine briefly the structure. limitations and powers of each.

Supreme Court.

This is the highest court, in dignity and importance of powers, in the state. As at present constituted it is composed of four judges, a clerk, crier and attorneys.

The present court went into operation January 1st, 1858. Previous to that time the circuit judges were judges of the Supreme Court, four of them constituting a quorum.

All the terms of this court are held at Lansing, in the Supreme Court Room in the Capitol. These terms are four yearly, beginning on the Tuesdays after the first Mondays in January, April, June and October. Each term continues until all cases in readiness have been heard or otherwise disposed of.

The judges are elected for eight years, one being elected every two years. During the last two years of the term of each judge he is Chief Justice of the Court. This court appoints its clerk, crier and reporter. Attorneys of the court are officers of the court.

Jurisdiction.—The Supreme Court has a general superintending control over all inferior courts, and power to issue writs of error, *habeas corpus*, *mandamus*, *quo warranto*, *procedendo*, and other original and remedial writs, and to hear and determine the same.¹ In all other

¹ *Writ of Error.*—This is an original writ which issues out of the Supreme Court for the purpose of bringing into that court for review, the record of proceedings in the circuit and superior courts, in which proceedings it is claimed by the party applying for the writ there have been errors of law committed. The purpose is to procure in the Supreme Court a review of the decision of the Circuit Judge as to the law applicable to the case.

In practice, in the circuit courts, exceptions are taken to the rulings of the court believed to be erroneous. These exceptions may be to his rulings upon questions of law arising in any part of the

cases it has appellate jurisdiction only. It has no original jurisdiction in ordinary cases, either in law or equity, the circuit courts being the highest courts of original jurisdiction in the state. The Supreme Court is occupied, therefore, in directing and compelling the action of

proceedings in a cause in the court. Matters which are within the discretion of the Circuit Judge are not subject to be reviewed in this way. Nor can rulings be reviewed by a party who has, notwithstanding them, suffered no injury. As, for example, if the Circuit Judge in a case of prosecution of a person for a forgery or other felony, should erroneously instruct the jury upon the law, but the jury nevertheless acquitted the prisoner, there would be nothing to review on either side. The court may have been wrong and the jury have been wrong; nevertheless, the prisoner is discharged and the proceeding is ended.

Upon the writ issuing, a bill of exceptions is settled by the Circuit Judge. This contains enough of the proceedings in the court below to enable the appellate court to understand the questions raised and to decide them. No matters are considered in the Supreme Court, unless called to the attention of the Circuit Judge. Assignments of error should be specific, and error must affirmatively appear from the record. The record in the Supreme Court is the certified return, made by the clerk of the Circuit Court in answer to the command of the writ. In the Supreme Court this record, before hearing, is printed by the party removing the cause. Briefs are also printed for the attorneys on each side of the case. These briefs are brief statements of the facts in the case and of the arguments and authorities relied upon.

The court may affirm the judgment of the court below, may reverse it and order a new trial, or may reverse it and enter judgment for party who brings error.

Habeas Corpus.—This writ, and the purpose of its issuing, have been defined.

Mandamus.—This formerly was not a judicial but a prerogative writ. It does not purport to decide any rights, but is rather in the nature of an award of execution. It is a method of compelling the performance of an acknowledged duty, or of enforcing an existing right. It is a discretionary writ.

It is issued to inferior courts and to public officers, to compel the performance of a specified duty. Its use has been extended so as to more directly than formerly embrace cases of private right.

These writs seem formerly to have been commands or letters missive from the sovereign directly to the subject, commanding the performance of some duty, and were issued without the intervention of the courts. In this country the writ has lost its prerogative aspect, but is still regarded as an extraordinary remedy.

An injunction is essentially a preventive remedy, mandamus a

inferior courts and bodies and in determining such questions as come before it upon error or on appeal from lower courts. One duty imposed by the Constitution is, that it shall make general rules establishing, amend-

remedial one. It is one of the highest writs issued from our courts, and only aimed where there is a clear and specified legal right to be enforced, or a duty which can be and ought to be performed. It is never granted in doubtful cases, nor, generally, where there is any other adequate remedy. Its object is not to supersede legal remedies, but to supply the want of them. Nor will it ever be issued when it is apparent that if issued it will prove fruitless. The granting of the writ is the exercise of original jurisdiction. Showing for the writ is made upon sworn petition setting up the facts relied upon to sustain the right.

It is not the general practice in Michigan to issue the writ in either a peremptory or alternative form, but to make an order directed to the person or body against whom the writ is sought, requiring cause to be shown why mandamus should not issue. The reply to this order is called the answer.

If the answer shows reasons or facts conclusive against the writ, the application will be dismissed. If upon the coming in of the answer material facts stated in the application are denied, an issue may be framed to try the questions of fact raised, and such issue sent down to some Circuit Court for trial. Upon the determination, by a jury, of the questions of fact raised, the peremptory writ will issue or be denied, as seems right.

Quo Warranto.—This writ is obsolete. Informations in the nature of a *quo warranto* may be filed by certain public officers, like the Attorney General of the State, to inquire into cases of unlawful intrusions and usurpations of office and the unlawful exercise of franchises. These are filed in the name of the people on the relation of some person who has the right to complain. Upon the filing of the information, issues may be framed upon it and sent down to the circuit for trial. In such cases it continues as an original case in the Supreme Court. If proceedings are to test a person's right to an office, the burden is upon respondent to show himself entitled to the office.

The information is often filed against private corporations to remedy mis-user, non-user or usurpation of corporate franchises. The proceedings are the same in all cases.

Procedendo.—This is a writ issuing from a superior court to one of inferior jurisdiction commanding it to proceed to the final hearing and determination of a cause. It issues where an action is removed to a superior court by *habeas corpus*, *certiorari*, or writ of privilege, and it does not appear to such appellate court that the suggestion upon which such cause was removed is sufficiently proved. It is in remitting the cause to the lower court that the writ issues.

ing and modifying the practice in its own court and in the Circuit Courts.

No minute description of the manner in which this court performs the duties imposed upon it can be given.

As a rule, in law cases, questions of law only are considered to ascertain if, in the trial of the cause in the lower court, any error of law has been committed. When an appeal is taken to this court in a Chancery case, the court considers both law and facts, and may make a finding of facts entirely opposed to that made by the court below. All writs and process issuing out of this court is styled, "In the name of the people of the State of Michigan." They may run into and be served in any county in the state.

The court has a seal which is affixed to or impressed on all its orders and all process issuing out of it.

Decisions of the court, with reasons for them, are required to be in writing, signed by the judges concurring in them.

If a judge dissents from the decision of the court, he is required to give his reasons for it in writing. These opinions are filed with the clerk of the court. Three judges must agree in reversing a judgment or decree of a lower court. Cases are affirmed upon an equal division of the court, three judges assenting to affirmance, and such an affirmance can not be questioned by any other tribunal.

The opinions of this court are published in printed volumes of reports, at intervals. It is the business of the reporter to prepare copies of the opinions for the printer, with such statements of facts as are necessary, and with proper head notes giving the gist or an abstract of the matter decided. This is done under the supervision of the court. There are now in all fifty-three

volumes of Michigan Reports, extending over the time from January, 1845, to nearly the present time. The first two of these are called first or 1 and second or 2 Douglass. The others are numbered consecutively from 1 to 51. There are also two volumes of reports of decisions of the Court of Chancery, when that court existed separately from courts of common law. One of these, called Harrington's Chancery Reports, contains the cases determined by the Court of Chancery from 1836 to 1842; the other, called Walker's Chancery Reports, contains cases determined from 1842 to 1845. References to these reports are made by referring to the name of the case, the report, and the page in the report where the case is reported. Common abbreviations are Harr., or Har. Ch., or H. for Harrington; W., Walk. Ch. or Walk. for Walker's, and 1, 2, 3, etc., Mich., for the regular reports. Douglass's reports are cited as 1 or 2 Doug. or Douglass. As finally determined in this court, the law is the law of the state, binding upon all citizens, courts and officers of the state.

We already know that this court can not exercise control over the executive or legislative branches of the government, neither can it change in any way the determination of officers vested by law with discretionary powers, so long as exercised in the proper, legal methods. The verdict of a jury can not be set aside, if the law applicable to the case was correctly given to them by the court trying the case. Each judge is paid four thousand dollars a year from the state treasury.

Clerk.—The clerk of this court holds office at the pleasure of the court, he keeps the records of all the proceedings of the court, attends its sessions, receives and files all records and papers required to be filed in his

office, and issues out of the court under its seal the orders and process of the court. He receives a salary from the state of three hundred dollars. His pay is principally from fees received from suitors.

Crier.—The crier attends the sessions of court, opens and closes court, serves its orders and process, and attends generally as officer in waiting, performing the duties performed by sheriffs in the Circuit Courts.

Circuit Courts: Jurisdiction.

As has been said, Circuit Courts are courts of the highest original jurisdiction.

They have original jurisdiction in all matters, civil and criminal, not excepted in the Constitution, and not prohibited by law; and appellate jurisdiction from all inferior courts and tribunals and supervisory control over the same.

These courts have also power to issue the writs heretofore named, and other writs necessary to carry into effect their orders, judgments and decrees, and give them a general control over inferior courts and tribunals within their respective jurisdictions. But it has been held that they have not power to issue writs of mandamus generally and in all cases where such writs might issue, but only to carry out their judgments and decrees. They may issue common law writs of *certiorari*, but can not issue writs of error. Such powers as the Constitution has given these courts can not be subordinated by the legislature to any other court or courts of equal or inferior jurisdiction. While these courts have general jurisdiction over the subject matter of suits in respect to persons and property, it can not be exercised beyond the limits of the county. This is the general

rule. There are exceptions in case of executions, of attachments, and process issued against joint defendants in actions upon contract, one of whom is served with process in the county. There is also an exception in certain actions of tort relating to real estate. But the rule is that the Circuit Court for each county sits within the county, and is restricted to its limits.

Jurisdiction: Amount.—The Circuit Court has jurisdiction in all civil cases where the amount in controversy exceeds one hundred dollars. In actions of tort the jurisdiction beyond one hundred dollars is exclusive, and in actions on contract, is exclusive beyond three hundred dollars.

Jurisdiction: Criminal.—Certain criminal jurisdiction is given to justices of the peace, to police justices in cities, and to the Recorder's Court of Detroit. The jurisdiction of justices, in such cases, will be explained under the head of Justices' Courts. The Recorder's Court exercises jurisdiction in cases arising in the city of Detroit.

Excepting this, Circuit Courts have general jurisdiction in all criminal cases.

Jurisdiction: Equity.—By statute, under the direction of the constitutional provision, Chancery Courts as tribunals separate and distinct from the Circuit Courts are abolished. The several Circuit Courts are courts of chancery within and for their respective counties, and the powers of such a court are exercised by the Circuit Judge.

Jurisdiction: Appellate.—Besides the original jurisdiction of Circuit Courts, they have appellate jurisdiction in a large variety of cases. While, as has been seen, they can not issue a writ of error, they do issue

writs of *certiorari* to justices of the peace, and to local boards and bodies exercising *quasi*-judicial authority, for the purpose of reviewing their action. Special appeals may also be taken from justices of the peace to the Circuit Court, the questions raised on *certiorari* and on special appeals being not greatly different, or raised in a different manner than if upon a writ of error to the Circuit Court. The largest number of appellate proceedings in the Circuit Courts come there on general appeal from justices of the peace. Both civil and criminal cases are taken up in this way. Any criminal case, when conviction has followed in the justices' court, may be appealed to the Circuit Court; any civil action where judgment has been rendered, for plaintiff or defendant, may be appealed to the Circuit Court. On general appeal, these cases are tried as though for the first time. The sentence in a criminal case appealed from justices' court can be no greater than the justice could have inflicted, though it may be either more or less severe than the one he did inflict. In civil appeal cases, costs in the Circuit Court are in the discretion of the court. Besides these, appeals general and special lie from proceedings had before Circuit Court Commissioners, before the Probate Courts, and, in matters submitted to arbitration under statutory provisions, the award is filed and judgment entered and enforced in the Circuit Court.

The Court.

The officers of the Circuit Court for any county are the Circuit Judge, the clerk of the court, sheriff and his deputies, stenographer, and the attorneys of the court.

The Judge.—Is elected in each judicial circuit for six years. His salary is twenty-five hundred dollars a year,

paid from the state treasury. He is the presiding officer of the court, and has authority, subject to that of the Supreme Court, to make rules for the orderly conduct of business in court.¹ The judge appoints, two years in advance, the times for holding court in his circuit, and notice thereof is published in a newspaper in each county. He may hold adjourned or special terms of court.

Clerk.—The clerk of each county is the clerk of the Circuit Court for the county and register of the Circuit Court in Chancery. It is his duty to attend, in person or by deputy, all sessions of the court, to keep the records and files of the court, the seal of the court, and a record of all proceedings in court which require to be of record.

He or his deputy swears the witnesses in the trial of causes. The county clerks are paid a salary for services in criminal cases and for performing county business, and as clerk to the board of supervisors. In civil causes they are paid for their services by the parties for whom

¹ Michigan is divided by the Legislature into twenty-eight judicial circuits, by counties, as follows: *First*—Lenawee, Hillsdale; *second*—Berrien, Cass; *third*—Wayne; *fourth*—Ingham, Jackson; *fifth*—Barry, Eaton, Calhoun; *sixth*—Lapeer, Oakland; *seventh*—Genesee, Shiawassee, Livingston; *eighth*—Montcalm, Ionia, Clinton; *ninth*—Kalamazoo, Van Buren; *tenth*—Saginaw; *eleventh*—Chippewa, Mackinac, Manitou, Schoolcraft; *twelfth*—Ontonagon, Houghton, Keweenaw, Baraga, Isle Royal; *thirteenth*—Antrim, Charlevoix, Cheboygan, Emmet, Grand Traverse, Leelanaw; *fourteenth*—Muskegon, Oceana; *fifteenth*—St. Joseph, Branch; *sixteenth*—St. Clair, Macomb; *seventeenth*—Kent; *eighteenth*—Bay, Ogemaw; *nineteenth*—Benzie, Lake, Manistee, Mason, Osceola; *twentieth*—Allegan, Ottawa; *twenty-first*—Clare, Gladwin, Gratiot, Isabella, Midland; *twenty-second*—Monroe, Washtenaw; *twenty-third*—Alcona, Iosco, Oscoda, Crawford; *twenty-fourth*—Huron, Sanilac, Tuscola; *twenty-fifth*—Marquette, Delta, Menominee; *twenty-sixth*—Alpena, Presque Isle, Montmorency, Otsego; *twenty-seventh*—Mecosta, Newaygo; *twenty-eighth*—Kalkaska, Missaukee, Roscommon, Wexford.

service is performed, according to a fee-bill made by the legislature.

Sheriff.—We have learned pretty well that the sheriff is the executive officer of the court, attends to open and close and adjourn the court, to preserve order, and to execute the orders and process of the court. Prisoners on trial in the Circuit Court are in his custody, and are brought to and taken from court under his charge.

Terms of Court.—We have already ascertained that the judges appoint the times for sessions of court. They are obliged to hold two terms of court a year in every county, three terms in counties having more than seven thousand inhabitants and four terms a year in counties having ten thousand inhabitants. Terms of court are usually held at the county seats of each county, though there is no reason why terms of court should not be held elsewhere in the county if the legislature deem it best.

County of Wayne.—In the county of Wayne, which is a judicial circuit by itself, there are three circuit judges; one of these is the presiding judge, and when three are sitting together, the concurrence of two is sufficient to decide any matter. The presiding judge distributes the cases which are for trial, assigning certain cases or classes of cases to each judge for trial. They hold separate courts in separate rooms, as if each judge was the only judge of the circuit, each one trying such cases as have been assigned him. A record of proceedings before each judge is entered in the journal of the court as though all three judges were sitting together and is verified by the signature of the presiding judge. Whenever the signature of the judge of the court is required to any bill of exceptions, order, decree, or other evidence of any proceeding, the signature of the

judge or judges before whom the proceeding was had, is sufficient.

No stay of proceedings can be ordered in any matter, except the judge granting it was the judge before whom the proceedings were had, unless the order is made in open court or signed by both the other judges. Such additional judges were made necessary by the amount of business necessary to be transacted in the circuit. Besides this court, there is in the city of Detroit a Superior Court, a description of which will answer for all municipal courts of the kind. This court, as has been stated, is not an inferior court, but is a tribunal having the same jurisdiction in civil matters as has the Circuit Court. It is conducted as the Circuit Courts are, has the same officers, and proceedings are conducted in the same manner and according to the same rules as in the Circuit Courts. But it is a court erected to relieve the Circuit Court of business, and from that legal business which arises between citizens of Detroit. This is the limitation upon the court. Parties must reside in the city. Its process runs no further. Determinations of the court are reviewed in the Supreme Court the same as those made in Circuit Courts.

Recorder's Court.—The Recorder's Court of Detroit is a court having jurisdiction of all crimes committed within the city of Detroit, except cases cognizable in the police court and by justices of the peace. Prosecutions are in the name of the people. It has also jurisdiction of offences against city ordinances, and in proceedings to open streets, etc. Cases may be removed from this court as from the Circuit Court to the Supreme Court.

The judge of this court is called the Recorder. The court has a clerk and seal. Municipal courts, known by

the name of recorders' courts, are not uncommon in cities, with powers more or less extensive.

Police Courts.—Sometimes erected by general statute, and sometimes by the charter of the city. They are confined in either event to such powers as are given by the law. Usually nothing but criminal jurisdiction is given them.

Probate Courts.

Are courts of record, and have a common seal. They are not courts of inferior jurisdiction, nor courts of law at all. Their origin and jurisdiction does not come from the common law. They render no judgments, their proceedings are of a summary character and not properly suits or actions. Their determinations are called orders, decrees, sentences, etc. They have general jurisdiction of all testamentary and other probate matters.

These courts are required to be held in each county, and the office of the judge must be at the county seat. The court is deemed to be open at all times for the transaction of any ordinary business, when the business does not require that previous notice be given to the parties interested. The judges of probate have the power to take the probate of wills, grant administration of the estates of all persons deceased who were at the time of decease inhabitants of the county, or died without the state, leaving an estate within the county to be administered. They have power to appoint guardians to minors and other persons, in certain cases, and jurisdiction of all matters pertaining to the settlement of estates of deceased persons and to guardianship of minors and others. It may be said here generally of all courts of record, that where a power is conferred upon the court,

there goes with the power, necessarily, the power to do all acts necessary to exercise the powers conferred.

The importance of this court, in a new and also in an old state, especially in regard to property matters, is all the time growing. When the average life of mankind is considered, and it is realized that as a rule the property, all of it, of every person who dies having property, passes through the court, or rather that the estate is administered under the jurisdiction of this court, it will be perceived that in time there will be few titles to land which at some time or other are not based upon the proceedings had in Probate Court.

Careful attention to the law provided in such cases, following it strictly, and full and perfect record of all proceedings, are extremely necessary.

Appeals lie from the orders and decrees of this court to the Circuit Court of the county, in almost all cases excepting in matters within the discretion of the Probate Court or judge, or orders not final. In the Circuit Court, if questions of fact are in dispute, issues are framed and the matters tried by jury as in other cases.

The Probate Judge is a state officer, is elected by the electors of the county, and holds office for four years.

A Probate Court is required to be held in each county on the first Monday in each month, and the judge may hold court on such other days as he may appoint.

Each probate judge has authority to appoint a probate clerk. The Supreme Court has power to make, from time to time, uniform rules for regulating the proceedings in Probate Courts, and prescribing the powers and duties of probate clerks.

Circuit Court Commissioners.

These are officers, elected in each county of the state for two years, having judicial powers not exceeding those of a judge at chambers or out of court. In counties having a population of twenty thousand or more, two of these officers are elected. No salary is paid them. Stated fees are allowed them for their services. No person can hold the office who is not, when elected, an attorney at law. The commissioner is an assistant of the Circuit Court, rather than an independent judicial officer. He has no greater judicial authority than can be exercised by a circuit judge out of court. Among the powers conferred is that of taking bail in certain cases, of discharging bail; power to entertain summary proceedings to recover the possession of land; to act as probate judge in certain cases of vacancy; to dissolve attachments issued from circuit or justices' court; to allow writs of *certiorari*.

But a commissioner can not try a matter involving the title to land, nor can he make any order which has the effect to counteract or set aside the order of any Circuit or Probate Court, or the Supreme Court.

Among the most important of the duties of a commissioner are those ministerial duties relating to the taking of testimony in chancery proceedings, and to the computation of amounts due on mortgages and the sale of mortgaged premises on foreclosure.

Unless under the rules of the court, a party to a chancery proceeding in which proofs are to be taken, has obtained the right to take those proofs in open court, they are taken by some person, reduced to writing, and reported to the court. While parties may agree upon

some notary public to do this, proofs are usually taken by a Circuit Court Commissioner. In *pro confesso* divorce cases—cases where no defense is made, but the statute nevertheless requires proofs to be taken satisfying the court that a divorce should be granted—the bill is referred to a commissioner by an order entered for the purpose, and he proceeds to hear and reduces to writing such proofs as may be offered.

Upon these he is required to report to the court whether, in his opinion, the material allegations in the bill of complaint have been sufficiently proved.

He also computes or figures the amount due on mortgages in process of foreclosure, upon the same being referred to him by order of the court. After decree, he advertises and sells real estate to satisfy foreclosure decrees. Where mortgages are foreclosed by advertisement, under the power of sale, the sheriff sells the property; but where mortgages are foreclosed in a court of chancery, all sales are made by a Circuit Court Commissioner.

This officer is required to give a bond.

Justices of the Peace.

By constitutional provision there can not be more than four justices of the peace in any township. The legislature may increase the number in cities. Justices are elected, in townships and in cities. They hold office for four years, and until their successors are elected and have qualified. At the first election in a township they are classified, after election, by drawing lots—pieces of paper on which are written one, two, three, four, are deposited in a box and each justice draws from it—the length of term to be served depending upon the lot

drawn. A justice elected for a full term and not to fill a vacancy, goes into office on the fourth of July next after the township election. Those elected at the first meeting in a township, and those elected to fill a vacancy, at once upon filing the oath of office and security with the county clerk. Justices are conservators of the peace. They have authority to administer oaths, to take acknowledgements to deeds and other conveyances, to perform the ceremony of marriage and to hold courts. They receive fees for their services, which are in all cases prescribed by law. They must reside in the township where elected.

Courts held by Justices.—The jurisdiction of justices' courts is limited in many ways by statute. *By amount:* In civil actions they have exclusive jurisdiction where the debt or demand does not exceed one hundred dollars, and concurrent jurisdiction in actions upon contract up to three hundred dollars, except as hereinafter stated. But they have no civil jurisdiction beyond three hundred dollars.

No justice can try any real action nor action where the title to real estate is in question. They have no jurisdiction in suits against executors and administrators, either as principal defendants or garnishees, for the recovery of the amounts due creditors of deceased persons as distributed.

There are many civil cases in which, within limitations, jurisdiction is conferred. These can not be named here, and reference will be principally made to proceedings within the general jurisdiction of these officers. Other limitations will show themselves as to parties, territory, etc., as we proceed.

Where Suits to be Begun. Every action begun in a

justices' court must be brought before some justice of the peace of the city or township, where: *First*, the plaintiffs or any of them reside; or, *second*, where the defendants or any of them reside; or, *third*, before some justice of a township or city in the same county, next adjoining the residence of one of the plaintiffs or defendants; or, *fourth*, before some justice of a city in the same county, formed from a township or townships next adjoining the residence of a plaintiff or defendant. This act does not, however, change or limit in any way the jurisdiction of a justice where the same has been prescribed by the charter of a city. If a defendant has absconded, and has property in a township or city, action may be brought before any justice of the township or city where he or his property may be. If plaintiffs are all non-residents, or if defendants are all non-residents of the county, suit may be brought before any justice of the township or city where such plaintiffs or defendants, or either of them, may be.

How Suits to be Begun.—Civil process of justices can not run into another county nor be served beyond the county. Suits may be instituted either by the voluntary appearance of parties or by process. But no consent of parties can give jurisdiction over subject matter, where it is not given by statute. Where suit is begun by process, it must be by either a *summons*, a *warrant*, an *attachment* or a writ of *replevin*, and there must be separate process for each action. Suits are deemed to be commenced: 1. Upon process by warrant, at the time of the arrest of the defendant. 2. Upon process by attachment, writ of replevin or summons, on the day when process is delivered to the constable. 3. When suit is instituted without process, at the time

when the parties shall appear before the justice and join issue.

Summons.—This process is usually the first process in actions upon contracts, and in a majority of civil actions. It commands the constable to summon the party against whom suit is instituted (defendant), to appear before the justice on a certain day and hour, to answer to the person instituting the suit (plaintiff), and naming the form of action. Summonses are made returnable, and served as follows: If the plaintiff and defendant are both residents of the county, at some day not less than six nor more than twelve days from the issuing of the same, and must be served at least six days before the return day thereof, by delivering to the defendant a copy thereof, if he be found. If he shall not be found, by leaving a copy at his last place of abode, in the presence of some one of the family of suitable age and discretion, who shall be informed of its contents. If the plaintiff be a non-resident of the county, summons may be either long or short; that is, may be made returnable as above, or as indicated in the following paragraph. If defendant is a non-resident of the county, summons shall be made returnable not less than two nor more than four days from date of issuing, and must be served at least two days before return day. There must two full days intervene between the day of service and return day, and they must be secular days. If a Sunday intervene it will not be counted as a day. The law provides in what manner, if personal service is not made, the action may be continued for the purpose of procuring such service.

Warrants.—Warrants are issued in cases founded on contract, and in cases other than those founded on a judg-

ment or contract. There is no space in this work to specify the grounds upon which a warrant can be issued. It can only be said, that the statute points out certain states of fact; which, if made to satisfactorily appear to the justice, by affidavit, will entitle the person to a warrant. But these facts must be stated positively and fully, and the affidavit must make a showing which will be within some one of the statutory provisions. Conclusions will not do; *facts* must be stated. Warrants are served by arresting the defendant, and at once bringing him before the justice. At once, or within three days, the justice shall proceed to hear and determine the case, unless parties consent to a longer time or an adjournment be had.

Attachment.—Is essentially a proceeding against property. The object is to secure property of defendant to meet the demand due to the plaintiff. The property being held by the officer, or returned by him to the defendant upon receiving from defendant a proper bond, the suit proceeds much as in other actions upon contract to judgment either for or against the plaintiff. If against, of course the bond or goods seized, are discharged. If in favor of the plaintiff, execution is issued and levied upon the property seized, or suit may be instituted upon the bond, if the goods attached are not produced and delivered up to satisfy the judgment. The grounds upon which the attachment may issue are stated in the law. They, or some of them, must be made to appear by an affidavit to be filed with the justice, which affidavit is the paper upon which the writ issues. A bond is required before the writ is issued. The writ is served by taking property, and by leaving a copy with the defendant if he can be found. Not only it, but

every subsequent step in the proceeding, must conform strictly to the statute. The writ is made returnable in not less than six nor more than twelve days from date, and must be executed at least six days before return day.

This is a purely statutory action, and not a proceeding after the course of the common law. If any essential matter is omitted, the whole proceeding fails.

Replevin.—This, too, is a proceeding against property, and is the form of action when property is unlawfully taken or detained from the owner. The suit in form is a proceeding to recover specific property. In this form of action, title to personal property is tried. The writ issues upon affidavit, and before issuing a bond is required to be filed with the justice, payable to the defendant. The affidavit and writ must describe the property detained so that the officer may know what property to seize. The writ is made returnable in not less than six nor more than twelve days, and it is to be executed at least six days before the return day.

Criminal Jurisdiction of Justices.

Any justice may hold a court to hear and determine charges for offenses arising within their respective counties, subject to certain provisions, in the following cases. Cases of larceny, not charged as a second offense, where the value of the property stolen does not exceed twenty-five dollars. Cases of assault and battery, not charged to have been committed riotously, or upon any public officer in the execution of his duties, or with intent to commit any other offense. Charges for willfully destroying, removing, injuring or defacing any mile-stone or mile-board, or guide-post or board, or injuring or defacing any inscription or device upon the

same, or any guide board or post. Charges for willfully and maliciously injuring, maiming, or killing any horses, cattle or beast of another, or destroying or injuring the personal property of another, where the value of the animals killed or injury done does not exceed twenty-five dollars. Charges for willfully and maliciously breaking down, injuring, removing, or destroying any monument erected to mark the boundaries of any township, or any tract or lot of land; for marring or defacing any building or sign-board, and various other enumerated trespasses upon public and private property of a small kind.

Besides offenses or classes of offenses enumerated in the statute, jurisdiction is given to try and determine all other offenses punishable by fine, not exceeding one hundred dollars, or by imprisonment not exceeding three months, or both.

The justice, unless an offense is committed in his presence, and he at once orders an offender under arrest, or the offender is brought before him by an officer who has taken him while committing a breach of the peace, proceeds upon the sworn complaint of some person to issue his warrant for the arrest of the offender.

But in addition to his duties respecting the classes of criminal offenses which he has the right to try and determine, the justice of the peace performs many duties in regard to offenses triable only in a higher court.

Offenders are arrested in such cases upon complaint and warrant from justices, the same as in cases triable by them. But it is for the purpose of determining whether the persons charged with crime should be held for trial in the higher court. This is done by what is called an examination, which the prisoner may waive if he chooses, but which, if not waived, consists in con-

fronting him with the witnesses for the prosecution, and examining them under oath, the substance of their testimony being reduced to writing and filed in the Circuit Court. The privilege of cross-examining witnesses, and of making a defense is given the accused, and upon the termination of the examination the justice decides whether or not an offense, not triable by a justice, has been committed, and whether there is probable cause to believe the accused guilty thereof. Accordingly as he determines the accused is either held for trial or discharged.

Something about Proceedings in Courts.

It will be perceived that reference to jurisdictional and other matters has been necessarily very brief. It is intended here to supply some seeming omissions, but by very general statements.

Under the general principle which has been repeated in this work, concerning the limitations placed by the Constitution upon authority, conduct of all officers, judges as well as inferior officers, must find some authority in the law, and all proceedings connected with the administration of justice must proceed according to due recognized forms. This is a right of every suitor, whether plaintiff or defendant, prosecutor or accused. Among the rights guaranteed by the Constitution, is one that persons shall have the right to have the truth of the facts in controversy, in cases brought in courts, decided by a jury. The Constitution says the right of trial by jury shall remain, but shall be deemed to be waived in all civil cases, unless demanded by one of the parties in such manner as shall be prescribed by law.

“In every criminal case the accused shall have the

right to a speedy and public trial by an impartial jury, which may consist of less than twelve men in courts not of record."

It has been held that a prisoner may expressly waive his right to a trial by jury, in justices' court, but not in the circuit or any court of general jurisdiction.

But it must be expressly waived; not demanding a jury would not be a waiver of the right.

In civil causes, the legislature has prescribed the manner in which the right may be demanded.

Both in justices, and other courts, a demand is made at some time before trial.

Since the duty of serving upon jury is one almost every American citizen may be at some time called upon to perform, a brief statement of the manner of getting juries may not be improper here.

Juries in Justices' Courts.—In actions to be tried before justices of the peace, where the parties, or either of them, have become entitled to a jury, one is obtained in the following manner. An officer, first sworn in civil cases, prepares a list of eighteen names of persons qualified to sit upon jury in the case at issue. From this list each party to the action—that is the plaintiff and defendant, or the People and the accused—strike out six names each

This leaves six names, and a writ called a *venire* is issued by the justice, and is served by the officer in attendance, commanding the persons named to appear at a certain hour, or forthwith, to try the cause.

Jurors in this court receive one dollar a day, and the fees, in civil cases, for one day's attendance, is required to be deposited, by the party calling the jury, with the justice. Parties summoned on a jury may be excused

by the justice for certain reasons, and may be challenged by the parties. The grounds for excusing or challenging jurors are stated in the law. They are essentially the same in justices and in circuit courts, but in courts of record certain peremptory challenges are allowed, no reason being assigned for excusing the juror challenged. When for any reason the jurors named in the *venire* do not appear, or are excused, talesmen are ordered by the justice and summoned by the officer from among the bystanders, or others, until a jury is empaneled satisfactory to the parties.

Parties in civil causes may agree to try a cause with less than six jurors. Jurors in justices' courts must be qualified to sit as jurors in circuit courts.

Juries in the Circuit Courts.—In the circuit courts an entirely different method of obtaining jurors is provided. By law, the supervisor of each ward and township in the county, or assessors or aldermen in cities, as the case may be, is required at the time appointed for the review of the assessment rolls to make a list of persons assessed on the assessment roll for the year; suitable persons, and persons having the qualifications of electors, to serve as jurors. The names of such as are exempt from such service shall not be taken, nor of those infirm, decrepit, not of good character, known integrity, or not conversant with the English language. Nor shall the name of any person be placed on the list who has made, or in whose behalf there has been made to the officers making the list, any application to be selected or returned as a juror.

These lists contain not fewer than one name for every one hundred inhabitants of the township or ward according to the last preceding census.

The selection of persons who were drawn and who served the preceding year, is to be avoided. Duplicate lists are made and signed by the officers making them or the major part of them, and within ten days one of each of said lists is transmitted to the clerk of the county, the other to the clerk of the township or the assessor of the ward, as the case may be.

The county clerk copies the names on separate pieces of paper, as nearly alike in size and appearance as may be, and folds them so as to entirely conceal the name, and makes separate packages for each township and ward, and indorses on each package the name of the township or ward. These jurors are to serve for one year. On receipt of new lists old ones are destroyed. At least fourteen days before the holding of any circuit court at which juries shall be required by law, twenty-four, and any additional ordered by the court, names are drawn by the clerk, three days written notice of the drawing being given to the sheriff, and two justices of the peace of the county. If any two of these officers attend at the day and hour named, the drawing proceeds; if not, it is adjourned until the next day, and some justice of the county required to attend. When any two of the officers required to attend do attend, the drawing proceeds.

The clerk puts into a box one of the packages of names, shakes the box and draws out one slip. This slip is handed to the officer in attendance and the name written down, and then the slips are all removed from the box. Another package is placed in the box and the drawing proceeds, until the required number of names has been drawn. A record is made of the town from which the last name is drawn, and at the next drawing

the clerk begins to draw from the package next in numerical order. The persons drawn are summoned by the sheriff. They are paid two dollars a day from the county treasury. They serve during the term of court for which they are drawn. Provisions for the summoning of special jurors are made. The judge may order talesmen summoned to complete a jury.

Jurors in justices' courts are judges both of law and fact. In the circuit court, they determine the facts in issue; the law is given them from the bench. The law exempts a great many people from jury service. Age, infirmity, etc., disqualifies. Persons in the militia service, and belonging to fire departments. Attorneys *can not* sit on juries. Certain state officers, and officers of counties and municipalities are exempt. Exemptions are, as a rule, to be urged by the exempted party, and are not ground for challenge.

Any suitor, in any court of the State, may appear and prosecute or defend his suit in person or by an attorney or agent of his choice. In criminal cases the accused is entitled to counsel for his defense, and compulsory process for witnesses.

QUESTIONS.

What are the three great departments of government? What is the judicial power? In Michigan, where is the power vested? Tell what a court is. By what power or authority are courts established? Tell what you can about the territorial limitations upon jurisdiction. Give examples.

What provision has been made for crediting in one state, judgments made in another? By what authority was this rule established? Why? Tell about jurisdic-

tion of persons. How is it obtained? Do all courts have jurisdiction of the same subjects or classes of cases? What is a court of general jurisdiction? What is original jurisdiction?

Tell about the Supreme Court, its terms, judges, and other officers. What are the names of the present justices of the Supreme Court? Who is chief-justice?

What jurisdiction has this court? How many terms each year? Where does it sit? How long is court in session at each term? What courts have the highest original jurisdiction? What original jurisdiction has the Supreme Court?

Tell what a writ of error is. Write a full abstract of this note. Tell what a writ of habeas corpus is, and for what purpose it is issued. What is a mandamus? Purpose of the writ? When can it issue? Upon what showing? Will it be granted in doubtful cases? Suppose there is some other *adequate* remedy? What is the practice in Michigan as to the form of the writ? What are *quo warranto* proceedings? For what purpose instituted? By whom instituted?

Tell what a writ of *procedendo* is. When, from what court, and for what purpose is it issued? What authority makes the rules for proceedings in courts?

What is the style of process issuing out of the Supreme Court? What territory bounds the jurisdiction of this court?

What can you say about the decisions of this court? What is a dissenting opinion? Where are opinions filed?

How are the opinions of this court published? How many reports are there? Tell about them and how they are designated. Give the common abbreviations. Sup-

pose you saw the reference, "*Marshall v. Brown*, 50 Mich., 148," what would you understand by it? Is there any court which can review the decisions of the Supreme Court? When can they be reviewed by the Supreme Court of the United States?

What force have the decisions of this court? Tell what the duties of the clerk are. How is he paid? What duties does the crier perform?

Tell what you can about circuit courts. Where do they meet? Who is circuit judge of your county? What pay does he get? From what source? Generally, what jurisdiction have circuit courts? What are courts for? What limitation is there on the power of circuit courts? What territorial limitations are there? Within what amounts can this court exercise jurisdiction? What jurisdiction in criminal matters? What equity jurisdiction? Are there any separate courts of equity?

What other jurisdiction have they? What is appellate jurisdiction? Tell what you can about the appellate jurisdiction of circuit courts. Tell about the officers of the circuit court. What is a judicial circuit? How are they formed? By what authority? How many are there in Michigan? In what circuit do you live? How are terms of court fixed? What notice is given of them? How many terms are held in your county each year? What is the requirement of law about terms of court? Who is clerk of the circuit court? His duties? Duties of sheriff? Tell all you can about terms of court. Is there any difference between Wayne and other counties in the way the circuit court is constructed? Tell about it. Tell about the recorder's court. What about police courts? Write an abstract of what is said about probate

courts. What can you tell about circuit court commissioners? What do they do? Describe the duties of this officer. How many justices of the peace can there be in any township? Can there be more in cities? Are they elected or appointed? Term of office? When do they go into office? If elected to fill a vacancy, when does term begin? Tell some of their powers as justices. What is a conservator of the peace? How are they paid? Can they hold court? Is their jurisdiction limited by amount? In what cases? What amount in civil cases? Does value in any way limit their criminal jurisdiction? In what cases? How? Can a justice try real actions? What is a real action? Tell where suits in justices' courts may be begun. How begun? What is a summons?

Write full abstracts of these subdivisions. What is a warrant? What is a process? What can you tell about the proper writ or process to be issued in different cases? Can a warrant be issued in civil cases? When? On what showing? What is attachment? Write an abstract of what is said about attachment. About replevin.

Tell fully about the criminal jurisdiction of justices of the peace. How may a criminal case tried in justices' court be reviewed? In how many ways? What court can review? Can the Supreme Court? Upon what writ? Write an abstract of what is said about proceedings in courts. What is a jury? How obtained in justices' courts? Must one be *demande*d in criminal cases? How are they obtained in circuit courts? Give a full description? Who can serve on jury? What is the difference between disqualification and exemption?

May a party to a suit or action prosecute or defend in person? What rights to persons accused of crime are given?

CHAPTER VI.

COUNTIES.

The territory of the state is divided into counties, the counties into townships, and the townships into school and road districts. This division is for convenience, both as determining limits within which the community is to exercise local government, and for the administration of the general laws of the state.

For the purposes of general administration of the laws, these subdivisions are to a considerable extent agents of the state. For the purposes of local government they are as against each other, independent and separate. For this purpose, too, certain legislative powers are given to them or to officers chosen by the inhabitants of them. This is necessary in order that the principle of local self-government may be carried out. This principle is older than our Constitutions, and though the Constitution vests all the legislative power in the state legislature, the right of this legislature to delegate certain powers of a local and administrative nature to these subdivisions is abundantly supported by authority.

For the purposes mentioned, these subdivisions, and the communities inhabiting them, are clothed by law with a legal identity. They are treated with and of as a

person or thing ; they are called municipal corporations.¹ The largest of these subdivisions is the county. How large a county may be is matter for the legislature to determine, except, that no organized county can ever be reduced by the organization of new counties to less than sixteen townships as surveyed by the United States, unless in each county to be affected by such division, a majority of electors shall so decide. The legislature may also erect a city of twenty thousand inhabitants, into a separate county, if a majority of electors of the county in which the city is shall so decide.

There are in Michigan eighty counties. Of these all are organized. An organized county is one having within itself the necessary officers and means for performing the duties and carrying out the purposes and powers of a county. The whole territory must be

¹*Municipal Corporation*.—A public corporation, created by government for political purposes, and having subordinate and local powers of legislation. Those matters which are of concern to the state at large, although exercised within defined limits, such as the administration of justice, the preservation of the public peace, and the like, are held to be under legislative control; while the enforcement of municipal by-laws proper, the establishment of gas-works, of water works, the construction of sewers, and the like, are matters which pertain to the municipality as distinguished from the state at large. As ordinarily constituted, municipal corporations have a dual character, the one governmental, legislative, or public; the other proprietary or private. In their public capacity a responsibility exists in the performance of acts for the public benefit, and in this respect they are merely a part of the machinery of government of the sovereignty creating them, and the authority of the state is supreme. But in their proprietary or private character their powers are supposed to be conferred not from considerations of state, but for the private advantage of the particular corporation as a distinct legal personality. As to such powers, and to property acquired thereunder, and contracts made in reference thereto, they are considered as private corporations.

A municipal corporation possesses and can exercise the following powers, and no others; first, those granted in express words; second, those necessarily or fairly implied in, or incidental to, the powers expressly granted; third, those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable.

organized into townships, and there must be more than one supervisor. One supervisor can not constitute a board.

Each organized county is a body corporate and politic for the purposes of suing and being sued; purchasing and holding real estate for the use of the county; borrowing money to erect and repair county buildings and for building bridges; for making necessary contracts and doing all business in relation to the property and concerns of the county.

County Seat.—In each organized county there is a county seat, which is the seat of government or capital of the county. Here are required to be kept the county records of the county, and the offices of the various county officers, except prosecuting attorney. The board of supervisors meets here, and, as a rule, the court house is here. Regular terms of the circuit court are held here, though the court may meet and hold regular terms at such other place in the county as the legislature may prescribe. A county seat once established can only be removed when the place to which it is proposed to remove it shall be designated by two-thirds of the board of supervisors of the county, and a majority of the electors voting shall have voted in favor of the proposed location.

County Officers.—In each organized county there is elected every two years, at the general election, a sheriff, county clerk, county treasurer, register of deeds, and prosecuting attorney. But the same person may hold more than one of some of the offices, and the board of supervisors may unite the offices of county clerk and register of deeds in one office. A judge of probate is elected in each county for four years, but he is a state

and not a county officer. There are also elected circuit court commissioners, two in each county having a population of twenty thousand or more, and one in each organized county having a smaller population.

The Sheriff.—The sheriff can hold no other office, and can not hold the office of sheriff for more than four years in any period of six years. He is required to give a bond to the people of the state in the sum of ten thousand dollars, with three sureties to be approved by the circuit judge. He appoints an under sheriff, and as many deputies as he thinks necessary, for whose acts he is responsible. These appointments must be in writing and filed in the office of the county clerk.

The duties of a sheriff are varied. He is the executive officer of the county. He has charge of the jail and prisoners therein; serves or executes all process, writs, precepts and orders made by authority and directed to him, and may serve process from justices' courts as well as from the circuit court. He attends by himself or deputy upon the sittings of the circuit court, to preserve order, open and close the court, and to serve such papers as may be necessary or perform such orders as the judge may make.

It is not possible to enumerate the duties and liabilities of sheriff or other public officers. There are some matters decided by the court in reference to the office which may be noticed.

The sheriff is required by law to renew his bond each year. It has been decided, however, that if he does not and continues to exercise the duties of the office, he will still be deemed sheriff in fact, at least, and the sureties of his prior bond will be liable for his acts. A return of service of process made by a deputy sheriff in his own

name, is good. He is not authorized to receive anything but money on collections. He is protected in serving a writ or process regular on its face.

County Clerk.—He is required to give a bond in the sum of two thousand dollars, to be approved by the circuit judge; is required to appoint one or more deputies, to be approved by the circuit judge, one of whom is to be designated as his successor in office in case of a vacancy. He may revoke his appointments at pleasure, and appointments and revocations must be in writing and filed with the county treasurer. The deputies may perform the duties of the clerk. He is required to send to the secretary of state annually, within one week after the fourth of July, a certified list of all justices of the peace of the county, stating the time of their elections, their post office addresses, terms of service, and whether elected to fill a vacancy. He performs the same duty with respect to township and city clerks and supervisors. The county clerk is clerk of the circuit court of the county and of the board of supervisors. He receives such a salary for these services as the board of supervisors may fix. As clerk of the circuit court this officer has charge of the seal of the court, and of the files and records in all causes begun in court. He is an officer of the court, and in person or by deputy is present at all sessions, keeping a record of all proceedings, issuing necessary process, and administering oaths to witnesses. A large number of reports, bonds, and oaths of office are required to be filed in his office.

As clerk of the board of supervisors, he attends the sessions of the board, and keeps a record of its proceedings.

For his services as clerk of the court, in civil causes

he receives certain fees to be paid by the party desiring the services performed. These fees are fixed and determined by law.

County Treasurer.—The county treasurer, like the sheriff, can not hold the office more than four years in a period of six years. He gives a bond, the amount and approval of which is left with the board of supervisors. No person holding the office of prosecuting attorney, county clerk, supervisor or sheriff, can be county treasurer.

As the title of the office indicates, the treasurer is custodian of the county money. He can only pay out money on the order of the board of supervisors, signed by the clerk and countersigned by the chairman, except in certain cases provided by law. The salary of the office is fixed by the board of supervisors. The title of all county funds received by the treasurer vests in him. He is debtor to the county to the extent of all moneys so received, and must account for them.

He is liable for loss of money by accident or otherwise, and if he receives anything else than money must account for it in money.

Prosecuting Attorney.—The prosecuting attorney is the law officer of the county, as the Attorney General is of the state. He is required to prosecute and defend in all the courts of the county all causes to which the state or county is a party.

When requested by any magistrate of the county, he is required to appear before the magistrate and prosecute complaints made on behalf of the people of the state.

He is also required to give opinions in cases where the state or county may be a party or interested, when requested by any civil officers in the discharge of their

official duties. The prosecuting attorney must be an attorney-at-law and admitted to practice. Counsel may be employed to act for him when he is sick or absent, or when the office is vacant, and he may, under direction of the court, procure necessary assistance in the trial of a person charged with a felony. Paid attorneys of private parties will not be permitted to exercise the functions of the office. The prosecuting attorney is not the attorney of the complainant or of any party. He is a minister of justice, and bound as well to protect the innocent as to prosecute the guilty. In the counties of Kent and Wayne, assistant prosecuting attorneys are appointed by the prosecuting attorney.

Register of Deeds.—The duties of this office are pretty well known. In this office are kept the records of titles of the county. Suitable books are furnished by the board of supervisors at the expense of the county. The register is required to appoint a deputy, and he receives pay from fees collected for recording papers. Those fees are fixed by law. These fees are: For entering and recording any deed or instrument, eleven cents for each folio (one hundred words); for copies of records, seven cents for each folio; seal to exemplification of record, twenty-five cents; for recording a deed or other paper written in any but the English language, twenty cents a folio; for entry of discharge of mortgage in margin of the record, ten cents; searching the records and files of his office, six cents for each year; for filing every notice of the pendency of a suit in chancery, and entering the same, six cents; for filing every other paper, and making an entry thereof, when necessary, six cents.

Coroners.—Two coroners are elected for each organ-

ized county, with other county officers. As a rule coroners perform no duties, though the office may become at any time a very important one. For instance, if there should, at any time, be no sheriff or under sheriff in a county, one of the coroners would be designated by the circuit judge to be sheriff. He would then have the same powers and authority as a sheriff. If for any cause the sheriff of a county should be committed to jail, the coroner living nearest the jail would be keeper of the jail while the sheriff remained a prisoner. And when the sheriff, for any reason, is a party to or interested in a cause, the coroner, or one of the coroners, executes process and performs all the duties of a sheriff in that cause.

County Surveyor.—County surveyors are elected at the general election. The certificate of a surveyor or his deputy is presumptive evidence of the facts contained in it, unless he is interested in such survey. But the certificate must embrace everything required to be put into a record of the surveys made by him, and his certificate is *only* presumptive evidence. Lines, corners and boundaries are to be determined as any question of fact is determined, by proofs. The surveyor can not finally decide upon such matters. He is a useful assistant, in the eye of the law, in determining such matters, but he could be disputed.

Drain Commissioner.—The board of supervisors of a county may appoint a drain commissioner. His duties are to lay out, open and construct drains or ditches in the county, upon proper application and after determining the necessity for such public improvement. It will be understood at once, that there is delegated to this officer the general direction, superintendence and

control of the proceedings for taking private property for public use. The proceedings to lay out, open or construct a drain can not be here given. It is enough to say that every step in the proceedings must conform to the requirements of law. It is now provided by law, that irregularities in proceedings to lay out and open ditches may be rectified by proceedings in court. But everything necessary to confer jurisdiction on the commissioner to act must exist, and every provision of law for the protection of private rights must receive attention and be strictly obeyed. This officer is required to keep a record of all his actions and of all applications made to him.

Notaries Public.—Certain officers appointed in each county by the Governor, by and with the consent of the Senate, who have authority to administer oaths, take affidavits and acknowledgments. They may exercise these powers anywhere in the state.

Judges of Probate and Circuit Court Commissioners are spoken of in connection with the judicial department of the state.

*Board of Supervisors.*¹—This is the county legislature. It is made up of a supervisor from each organized township in the county, and supervisors from the cities in the county. The representation allowed to cities upon this board is such as the legislature may prescribe. I think one supervisor from each ward is a common provision in this state. This board is vested with both legislative and executive powers. Such legislative authority as the legislature of the state has delegated to the board it may exercise, but no other. From the manner of composing the board it will be seen

¹ See Chap. 117, Howell's Statutes; Const. Mich., Art. X.

that each part of the county is given representation. This board is required to meet annually on the second Monday in October at the court house in the county, and if there be none at some place at the county seat, for the transaction of business. Necessary special meetings may be had at such times and places as may be convenient, and the board may adjourn from time to time as it may deem necessary. A session of the board is deemed to embrace all adjournments. A majority of the supervisors of any county constitute a quorum for the transaction of ordinary business, and all questions which arise are determined by the votes of a majority present, except when the question is upon the final passage or adoption of any measure or resolution, when a majority vote of all the members elect is necessary. The board sits with open doors, and all persons may attend their meetings. At the first meeting after the election in each year, they are required to choose one of their number chairman, to preside over the meetings of the board for the year.

Powers of the Board. — *Auditing and Allowing Claims.* — First among the powers of the boards of supervisors, or in Wayne County the board of county auditors, at any meeting lawfully held, is that of auditing, and allowing or rejecting claims against the county. Formerly, there was an appeal from the decision of the board upon a claim presented to the county court. Now, by the Constitution, it is provided that they shall have exclusive power to prescribe and fix the compensation for all services rendered for, and to adjust all claims against their respective counties, and that the sum fixed or determined by them shall not be subject to an appeal.

The effect of this provision is to make their allowance

or disallowance of claims decisive and final. But it does not give a board authority to act arbitrarily. They must examine claims presented, are empowered to take such testimony and make such examination of the matters as is necessary. The courts can compel them to proceed to examine and pass upon claims. In cases, too, where the amount of compensation has been fixed by law, or where other modes of adjustment and liquidation are prescribed by law, the boards must audit and pay them at the amount so determined.

Nor does the constitutional provision operate to divest the courts of such jurisdiction as they possessed originally in such matters, but only to preclude them from hearing the matters on appeal. A person with a proper claim against a county, for moneys illegally collected and held, may enforce the claim in the courts. Nor does this provision authorize them to determine finally the amounts of the claims of their own counties against other counties, nor against townships or other municipal divisions. But where a board has once passed upon and rejected a claim, it can not be compelled to again examine it.

Without attempting any detailed statement of the powers of boards of supervisors, we may say, generally, that they represent the people of the county within certain limitations, in the purchasing, exchanging, supervising, building, and repairing county property. One principal limitation upon their powers is as to the amount of money which may be voted by them in any one year without a vote of electors of the county. For instance, they can not without such vote, expend to exceed five hundred dollars in repairing public buildings in any year, nor borrow or raise by tax, a sum exceeding

one thousand dollars in any year for the purpose of constructing or repairing public buildings, highways or bridges, unless the electors so vote. They can only raise money for the purposes specified in the law, and to be expended under their direction, except in some cases where control of expenditures is turned over to others.

They represent the people for the purposes of determining and raising by tax or loan money necessary to defray the current expenses of the county. This subject will be considered under the head of taxation, farther on. But, if a loan is made by them, it must in all cases be payable within fifteen years from date.

In the raising of money for county purposes, they act in a legislative capacity, as they do also in making laws regarding the county poor, the destruction of wild beasts, of thistles and other noxious weeds.

They may authorize any township in the county to borrow money to repair or build bridges. They divide the county into representative districts, when the county is entitled to more than one representative in the state legislature. Upon proper application to any board, it has power to erect a new township, to divide or alter in its bounds any township already erected.

State and territorial roads are within the subjects over which boards have jurisdiction. They may permit or prohibit the construction of dams or bridges over navigable streams, and make general rules as to the kinds of bridges and how to be constructed over navigable streams. They fix salaries of county officers, and establish section corners.

In Wayne County, the board of county auditors have all the powers of boards of supervisors, excepting those relating to the assessment and collecting of taxes. In

regard to such matters the board of supervisors of Wayne performs the same duties as do other boards of supervisors. The duties of boards in relation to the assessment and collecting of taxes — among their most important duties — can be best treated in the chapter on taxation.

Each member of the board of supervisors receives pay at the rate of three dollars per day for the first twelve days only of any continuous regular session, and six days only for any adjourned session, and for the first three days only of any special session. There can not be more than two special sessions with pay, in any year. They also receive six cents for each mile necessarily traveled in going to and returning from the place of sessions. No other pay can they receive. Their bills for expenses and *per diem* are audited and allowed by themselves, and paid out of the county treasury.

In Wayne and Saginaw counties, pay for the first *fifteen* days of a regular session is allowed, at the same rate as above.

QUESTIONS

How is the territory of the state divided? For what purposes? Why is the division made? Tell what you can of these purposes.

What county do you live in? What is the largest subdivision of territory in a state? How large may it be? How small? When less than sixteen townships? When may a city be erected into a county? How many counties in Michigan? What is an organized county? How many are organized in Michigan? Can you name them? How many organized towns must there be in a county? What is a corporation? What are the corporate powers of counties? What is a county seat?

What are kept there? Where does the board of supervisors meet? How may a county seat be changed or removed?

Name the county officers? What are the names of the county officers in your county? What is the name of your county seat? Tell what you can about the sheriff. County clerk? Who is clerk of the circuit court in your county? How much do you pay your county officers? Tell about the county treasurer. Prosecuting attorney? Register of deeds? Coroners? County surveyor? Drain commissioner? Is there a drain commissioner in your county? Notaries public? Board of supervisors? Write a full abstract showing all you know about this board, whether stated in this book or not. Give generally the powers of the board. Who is supervisor of your ward or township?

To whom are claims against the county presented? What force has the action of the board in allowing or disallowing claims? Tell what you can about limitations upon the power of this board. Give a full description of the powers and authority of the board. What powers has the board of auditors of Wayne county? What pay do supervisors receive? How long and how many sessions may they hold? Is the rule about pay uniform over the state?

CHAPTER VII.

TOWNSHIPS.

Division, Origin.—Under act of Congress of May 18, 1796, the public lands of the United States are surveyed first into townships, tracts six miles square.

TOWNSHIP.

6	5	4	3	2	Section 1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

SECTION.

N.W. $\frac{1}{4}$	N.E. $\frac{1}{4}$	
S.W. $\frac{1}{4}$	N.W. $\frac{1}{4}$ of S.E. $\frac{1}{4}$	N.E. $\frac{1}{4}$ of S.E. $\frac{1}{4}$
	S.W. $\frac{1}{4}$ of S.E. $\frac{1}{4}$	S.E. $\frac{1}{4}$ of S.E. $\frac{1}{4}$

These are sub-divided in sections, quarter sections and lots containing forty acres each, being one-quarter of a quarter section. The term therefore denotes one of these territorial divisions, and, also, where a township is organized, the municipal body or community, organized for certain local and political purposes. In Eng-

land the term *town* has long been in use, signifying some territorial division, and sometimes including in its application large cities and villages. In the Eastern, and especially in the New England states, the corresponding political divisions are called towns. In most of these states the general colonial authority created these subdivisions. In Rhode Island, the towns preceded and created the general authority. The origin of towns and cities, that is, of separate, distinct communities exercising local jurisdiction, is very remote. It may be said that the history of the world begins with the history of cities. The history of ancient Egypt is the history of cities. Municipal corporations were familiar to the Roman law. Rome as a city held and exercised sovereignty over almost the known world. The common division of civic communities established by the Roman government was into *prefectures, municipal towns and colonies*. *Prefectures* did not enjoy the right of self-government. They were under the rule of prefects. Municipal towns, says Dr. Liddell, at length received the full Roman franchise, "and hence arose the common conception of a municipal town; that is, a community of which the citizens were members of the whole nation, all possessing the same rights, and subject to the same burdens, but retaining the administration of law and government in all local matters which concern not the nation at large."¹

After the overthrow of the Roman power, the nations of Europe were nations of cities. The conquering of a nation or country was the taking of its cities. Powerful cities demanded of the crown, and received more or fewer local privileges. Free cities, after a time,

¹ Liddell's *Rome*, Chap. 27, Sec. 8.

became common, in Spain at an earlier date than elsewhere. Some time between 1100 and 1125 A.D., Henry I. granted to London its original charter. This conferred many valuable municipal privileges,¹ among them the right to choose certain officers, as sheriff, justice and others. Right to local self-government was quite generally conferred on English towns and boroughs in the reign of King John. But they had no right of representation in the parliament or legislative body of the kingdom. In the reign of Edward I. is said to have originated the practice which, continued, made the House of Commons.

Being distressed for money, and not desiring at the time to levy arbitrary taxes, he thought of getting a voluntary grant from the people. He issued writs to about one hundred and twenty cities and borough towns, desiring or commanding them to send to parliament, which then consisted of king and council,—the council being made up of the lords, spiritual and temporal,—along with two knights of the shire, two deputies from each borough in the county, with authority from the communities sending them to consent to whatever the king and his council should require of them. The experiment proved a success and the practice continued.² Spite of arbitrary proceedings taken by different English monarchs to recall these privileges, the power of the people grew. It beheaded Charles I. Charles II.

¹ See Norton's Commentaries on the History, Constitution, etc., of the City of London.

² The student is referred to Hume's History of England; Hallam's Middle Ages; Macaulay's History of England; Adam Smith's Wealth of Nations; for history on this subject interesting and instructive, Guizot's History of Civilization in Europe contains a very full account of the conditions of the cities and towns of Europe, from the fifth to the tenth century.

attempted, with much success, to acquire absolute control over the cities and boroughs. The judges were his creatures and assisted him. It is said there were eighty-one *quo warranto* proceedings brought against municipal corporations by Charles II. and James II. In 1683, writs were issued for abrogating the charter of Massachusetts, and in 1687 against Rhode Island and Connecticut. It will be recollected that the people of Connecticut endeavored to preserve their charter, at this time, by concealing it in the Charter Oak. The revolution of 1688 caused the restoration to the colonies of their charters. To-day neither crown, nor lords, nor both, are able long to withstand any popular movement. The House of Commons, representing the people, is the power in England. This brief review has been given to show the spirit of the institution of local self-governing communities.

“Local assemblies of citizens constitute the strength of free nations. Municipal institutions are to liberty what primary schools are to science; they bring it within the people’s reach; they teach men how to use and how to enjoy it. A nation may establish a system of free government, but without the spirit of municipal institutions it can not have the spirit of liberty.”¹

Our forefathers brought the spirit with them. They perpetuated the principle in the Federal Constitution, and the right is one common to all the states.

It is in townships, cities and villages that the citizen in Michigan exercises the right, not only of local self-government, but of participating in county, state, and national governmental affairs. While the political importance and functions of all municipal corporations

¹ De Tocqueville’s Democracy in America, Chap.V.

are similar, the local machinery of government and the extent of powers are different. Cities and villages will, therefore, be separately treated.

Organization.—As has been already stated, townships are mere political organizations. They are created wholly by statute. They have only such powers as the statute confers, and are subject to no obligations, excepting statutory ones,—no common law obligations. In this, as will be seen, they differ from cities, cities being to a certain extent voluntary corporations, while townships are not.

The law places the power to organize a new township, divide or alter in bounds an existing one, in the boards of supervisors of counties, and the manner in which it can be done is especially pointed out. All proceedings to the purpose must conform strictly to the law. The provisions can not be stated here. They are found in chapter 17 of Howell's Statutes. The proceedings to erect a township or divide one, or alter the bounds of one, may be reviewed in the courts.¹ But the proceedings, or the legal existence of a township can not be attacked, except in direct proceedings for that purpose, and a township organization, long acquiesced in and acted under will not be disturbed for irregularities and defects in its formation.

Each organized township is a body corporate. All suits and proceedings by or against a township shall be in the name thereof. Mandamus is the proper remedy to enforce payment of fixed and liquidated demands against a township, and not suit on the demand.

Powers.—Townships have power to appoint all neces-

¹ See *Scrafford v. Gladwin Supervisors*, 41 Mich., 647; *Atty. Gen. v. Page*, 38 Mich., 286; *Matthews v. Otsego Supervisors*, 48 Mich., 587.

sary agents and attorneys ; to purchase and hold real estate for the public use of the inhabitants ; to convey and dispose of the same ; to make all contracts that may be necessary and convenient for the exercise of corporate powers ; and any orders for the disposal of corporate property. They also have power to make laws upon specified subjects within certain limits. A township may acquire and hold lands for a public park.

Township Action.—A township acts through the whole body of the electors in the township, through the township board, and through its other elective officers.

Township Meeting.—The annual township meeting is held on the first Monday in April. At this meeting are elected the following officers: Supervisor, township clerk, treasurer, school inspector, commissioner of highways, such number of justices of the peace as are by law to be elected, and so many constables, not exceeding four, as may be ordered by the meeting.

Each of these officers is to be chosen by ballot. If it is designed to have fewer than four constables, a formal resolution to that effect should be adopted, otherwise the four persons receiving the highest number of votes will be elected.

At this election, the inspectors of election shall be the same as at the general election. The township clerk is clerk of the meeting and is required to keep faithful minutes of its proceedings, and a correct list of the persons voting at the election. At this election polls are to be opened as soon after nine o'clock as possible, and closed between three and six o'clock in the afternoon. An hour's notice of the closing must be given. The ballot must be a paper ticket with the names of persons

for whom the elector intends to vote, written or printed, or partly written or printed, upon it.

The inspectors deposit the ballots in a box.

The votes must be publicly counted by the inspectors. The inspectors, when the canvass of votes is completed, are required to draw up a statement in writing, setting forth in words at full length, the whole number of votes for each office, the names of the persons voted for for each office, and the votes for each person. This statement must be certified to by the inspectors as correct. The inspectors also certify on such statement their determination of the persons elected to the respective offices, as well by ballot as those elected without ballot. The statement and certificates are left with the township clerk, and are a part of the records of his office.

The person having received the greatest number of votes for any office is elected.

At this same meeting are elected, *viva voce*, or in any manner the meeting may direct, one overseer of highways for each road district, and as many pound masters as the meeting may direct. In the upper peninsula, these officers are elected the same as the other township officers, by ballot.

If it is neglected to elect overseers, or if the office become vacant, or a new road district be formed, the commissioner of highways is authorized to make the necessary appointments. Excepting justices of the peace and school inspectors, township officers hold office for one year and until a successor is elected and qualifies.

Voting of Taxes.—At the annual township meetings, or at any legal meeting, the electors of the town vote to raise the money necessary to defray the township expenses

and charges. But they can not vote money for any purposes not authorized by law. Debts illegally contracted by township officers are not binding on the township, nor can money be raised to reimburse a township treasurer for funds stolen from him. The legislature can not authorize such raising of money. Neither can a township meeting, by vote of electors, audit private claims against the township.

A township charge is any fixed amount for which the township liability is determined and entitled to be paid. A sum for contingent expenses, it has been held, was properly raised, though the purposes for which the money was to be applied, was not otherwise stated.

They may vote at any legal meeting to raise by tax a sum, not exceeding one per cent in any one year, upon the assessed valuation of the taxable real and personal property as appears by the last equalized and perfected tax-roll of the township, for building a town hall or other buildings required for township purposes. But no such vote shall be taken, nor appropriation made, unless notice of an intention to move for such vote and specifying the amount to be raised, has been given by at least twelve freeholders, posted up in five of the most public places in the township, at least ten days before the day of such meeting. A majority of the qualified electors voting at such meeting must authorize the tax. The subject of township taxes will be further referred to under the head of taxation.

We may summarize township powers, both as to the general supervision and control over township property and affairs, and over the subject of raising moneys by tax, by saying that there must always be found some authority in the law for their action. No general pow-

ers are conferred upon townships. The limitations now imposed upon them may be enlarged or restricted ; the principle will always be the same. And the authority conferred should be exercised in strict conformity with the power. Records should be kept, full and accurate, of all township proceedings.

Some other powers are conferred, of a local legislative character, such as those for determining the time within which cattle shall be restrained from going at large in the highways, and suitable penalties not exceeding ten dollars for any single breach, may be imposed. Such matters as this are matters of pure discretion for consideration of the inhabitants of each township.

It may also be said that, acting within the law, it is not competent for any persons or power, not even the legislature, to take the management of township affairs from the officers of the township and vest it in others of their own choosing. There are many provisions of law relating to special meetings in townships and to the places at which they shall be held. The resignations of officers and filling of vacancies in office are provided for. One principle may be stated in reference to all meetings either of the inhabitants or of the town board, and it applies to almost every case of meeting of boards of public officers to perform public business. Unless the law provides a time and place of meeting, notice must be given to those entitled to be present, and the notice must sufficiently apprise those on whom it is served of the purposes of the meetings. Let us very briefly notice some of the principal duties of township officers.

Supervisor.—This office is the most important in the township. The supervisor is the representative of the township in the county legislature. He is the assessor

of his township. He is required to preserve and keep all books, assessment rolls and papers pertaining to his office in some safe and suitable place. He prosecutes in the name of the people, or otherwise as may be necessary, to recover for penalties and forfeitures incurred in his township, and for which no other officer is specially authorized to prosecute. He is the agent of his township for the transaction of all legal business. Process against the township for beginning suits is served on him, and he defends and sues for the township. His duties are largely connected with the taxing power.

Township Clerk.—We have already learned that the township clerk is the record keeper of the township. He is required to record the doings of township meetings and of the meetings of the township board, to file and preserve certificates of oaths and all such papers as are required to be deposited with him. He has the custody of all the township records. Chattel mortgages are filed in his office. He keeps an account with the township treasurer, charging him with all funds coming into his hands, and crediting him with all moneys paid out on the order of the proper authorities. He also is required to open and keep a separate account with each of the several funds belonging to his township, crediting them with such moneys as belong to them, and charging them with the warrants drawn on the township treasurer against them.

Township Treasurer.—Takes charge of all moneys belonging to the township, and accounts for the same, paying it out only on orders from proper authorities. He is debtor to the township for all such moneys, and if he receives anything in the place of money, or loses money, he must still account in money to the township.

He must pay orders only to proper persons, and he can not correct an order as to amount, but must pay it at its face if at all.

He may be compelled by mandamus to pay moneys in his hands upon proper orders. On the Tuesday next preceding the annual township meeting, he is required to account to the township board for all moneys received and disbursed by him. The treasurer is required to give a bond to the township, to be approved by the supervisor, for the faithful performance of his duties. This bond he must execute himself with his sureties. The bond must run to the township.

Township Board.—The supervisor, the two justices of the peace whose term of office will soonest expire, and the township clerk, constitute the township board, and any three of them are a quorum for the purpose of transacting business. When for any cause one of these can not act, one of the other justices, on being notified by some member of the board, may act with the board with the same powers as the other members. This board meets annually on the Tuesday next preceding the annual township meeting, for the purpose of auditing and settling all claims against the township. They state on each account, the amount allowed by them, and it is paid by the treasurer on the order of the board, signed by the clerk and countersigned by the chairman of the board (supervisor). The board at this meeting examine and audit the accounts of all township officers having authority to receive or disburse public moneys, and they determine the amount of the bond to be given by the next township clerk.

This board is also authorized, whenever the township

at its annual meeting shall refuse or neglect to vote such sum or sums as may be necessary to defray the ordinary township expenses, to vote such necessary sums, not exceeding the limit provided by law, at any regular meeting. This amount is in addition to any amount voted at the township meeting. But they are not authorized to vote sums for other than township expenses. Money to pay a judgment against the town may be included, and money to pay amounts due to another township where townships have been divided.

The township board meets as often during the year as may be necessary to transact public business.

Constables.—The office of constable is very ancient. Ever since there have been courts, it has been necessary to have proper persons to serve writs and other process, and act as ministerial officers to the court when in session. A constable performs the same duties for justices' courts that the sheriff does for the circuit courts. He can serve a writ, process, or order directed to him in any township in his county. Constables must be elected. The legislature can not vest the powers of constables in persons not so chosen. He may, and it is his duty to arrest, without a warrant, a known felon, and all persons committing breaches of the peace in his presence. Process fair on its face protects him in the lawful execution of it. If he serves illegal process, or process in his hands is illegally executed, he is liable in damages for injury resulting. He is required to give a bond, to be approved by the supervisor or clerk of his township, for the faithful performance of his duties, and agreeing himself and sureties to pay all such sums of money as any person may become entitled to on account of any default or neglect in the service or return of any process delivered

to him for service or collection. All actions on this bond must be prosecuted within two years after the expiration of the year for which he is elected.

Commissioner of Highways.—The duties of highway commissioner relate to the opening, discontinuing and altering of the highways in his township, and the general care and superintendence of them and of the overseers of highways.

All ways are either public or private. A highway is a public passage for all. On it all the people of the state have an equal and common right to travel. It is open to all suitable methods of travel, unless in its dedication the use of particular methods is prescribed. One means of traffic or travel has no rights superior to others. The commissioner can not discontinue state roads, but only those laid out by commissioners.

The proceedings to open and alter highways, as they usually affect, more or less, interests in private property, must be in strict conformity with law. The constitutional provisions that no person shall be deprived of life, liberty or property without due process of law, and that private property shall not be taken for public use without just compensation, apply to every case of the taking of private property for a highway. Therefore all the requirements of law must be strictly followed. The office is an important one. Highways in this state are opened, improved and maintained by the labor of the inhabitants residing in, and by assessments on property in, each township. The commissioner divides his township into as many road districts as he thinks may be convenient, and may alter, vacate, divide or consolidate districts; but if a township has been organized more than fifteen years, he can vacate, alter, divide

and consolidate these districts only by sanction of the township board.

By vote of electors at the annual township meeting, it may be determined to assess a money tax for highways. The vote is by ballot, and if it is so decided, the meeting, immediately after electing overseers, vote the amount of the tax they desire assessed, not exceeding one-half of one per cent on the assessed valuation of the township. If no sum is voted, the township board, within the same limits, fixes the amount. This is spread like other taxes on the assessment roll. The labor on highways is then performed and paid for on order of the commissioner, from the fund so collected. If the township do not vote to raise the highway fund in this manner, then the labor is assessed by the commissioner, and either worked out by the inhabitants of each road district under the direction and oversight of the overseer of highways, or commuted by paying to the overseer money. So the commissioner becomes an agent in the levying of local taxes.

Overseers of Highways.—Are the directors in the road districts of the highway labor performed by the inhabitants; look after the condition of the roads and bridges; provide necessary implements for performing the highway labor; warn out the inhabitants of the district to perform the highway labor and direct what shall be furnished and what particular labor performed by each.

Receive commutations for highway assessments, and give receipts therefor, paying to the town treasurer moneys remaining in their hands, after necessary expenditures, and rendering an account of the same. Report property and persons delinquent for highway labor

to the commissioner, that the tax may be collected from the property assessed.

Overseers of highways act as fence viewers.

School Inspector.—See school district.

Drain Commissioner.—A township drain commissioner is elected at the annual township meeting. His duties are to lay out and construct drains in the township. Like the duties of the commissioner of highways in laying out roads, his duties very often relate to the taking of private property for public use. Connected with his duties, also, is the subject of taxation. It can only be repeated, that in acting upon a petition for the establishment of a drain he must first see that it is a proper petition, and then in every step taken in establishing and opening a drain see that he follows, strictly, the statute. It is an important office. His compensation is fixed by the township board, at some amount not to exceed three dollars a day, for the time employed.

All township officers, excepting school inspectors, drain commissioners, and justices of the peace, hold office for one year. School inspectors and drain commissioners are elected for two years, and justices of the peace for four years.

No person except an elector is eligible to any office except the office of school inspector. A woman of or above the age of twenty-one years, and who has resided in the state three months and in the township ten days next preceding the election, may be elected school inspector.

QUESTIONS.

Tell about the division and origin of townships. Their subdivisions? Write an abstract of this subdivision and explain the principle of local self-government.

Tell about the organization of townships. Where is the power to divide, organize, etc., a township? May proceedings to organize or divide a township be reviewed in the courts? What is meant by a body corporate? Can a township sue and be sued? In what name? What powers have townships? How does a township act? Tell about the township meeting. What officers are elected? How are they chosen? How many constables are elected? Tell about this. What sort of ballot must be used? How are the votes counted and by whom? How is the result stated? How long do township officers hold office? Any exceptions? What can you tell about the voting of township taxes? For what purposes and in what manner can the township meeting vote taxes? What is a township charge? What can you say, generally, of township powers? What other legislative powers are conferred? Can the management of township affairs be taken from the township and its officers? Why not? Tell all you can about the supervisor and his duties. State fully about the township clerk and his duties. What are the duties of township treasurer? What officers compose the township board? Tell about its meetings and duties? How are public moneys disbursed? Where do these moneys come from? Can the township board vote a tax? To what amount? Write an abstract of what is said about constables. State the duties of highway commissioner. What powers or right is exercised in taking private property for the purpose of opening a highway? How are common highways improved and kept in repair? Is there more than one way? May the whole highway tax be raised by money? When? How, then, is the highway labor performed?

CHAPTER VIII.

SCHOOL DISTRICTS.

School districts, like counties and towns, are bodies corporate. They are formed by the division of townships and are numbered. The division is made by the township board of school inspectors. Each city incorporated under general laws is a school district. In townships the board of school inspectors have power to alter the boundaries of school districts under certain restrictions. No school district can contain more than nine sections of land, and these must be contiguous, and in as compact form as possible.

When organized they are municipal corporations, and possess all the powers of a corporation for public purposes. Under the corporate name they are capable of suing and being sued, or acquiring and holding property and contracting in regard to it, and the other necessary corporate objects. They can take and hold money bequests in trust for the maintenance of a library for the use and benefit of all persons in the district. Like other corporations they have officers, and act through them or by the inhabitants of the district as may be provided by law.

Organization.

Whenever the board of school inspectors decide to form a school district, the clerk of the board is required to notify a taxable inhabitant of the district of such

formation, describing the boundaries and specifying the time and place of the first meeting. These notices also direct the inhabitant to notify every qualified voter of the district, personally, or by leaving a written notice at his place of residence of the time and place of such meeting, at least five days before the time appointed for the meeting. After proper service, the inhabitant to whom this notice is given endorses upon the notice a return, showing how the notices were given, and at what dates. This return he makes to the chairman of the meeting, who delivers it to the director chosen by the meeting, and it is recorded as a part of the records of the district. If the inhabitants fail to organize, the same proceedings are again had.

At the first meeting there is to be elected by ballot a moderator for three years, a director for two years, and an assessor for one year. At the expiration of these various terms of office their successors are elected for a term of three years each.

This leaves an officer to be elected annually at the annual district election. A district is organized when any two of the officers elected at the first meeting shall have filed acceptances with the director, and the same shall have been recorded in the minutes of the first meeting.

A district is presumed to have been legally organized when it has exercised the franchises and privileges of a district for two years. After the exercise of these privileges for a considerable length of time no inquiry will be permitted into the organization. At no time can its existence be questioned, except in direct proceedings for that purpose. A school district may, when necessary or convenient, be formed from territory partly in one and

partly in an adjoining township. In forming such a district the boards of inspectors, or a majority of them from each township, form the district, which is designated a fractional district, and they direct which township clerk shall give the proper notice of such formation. The annual report of the director of such district is required to be made to the inspectors of the township in which the school house is situated. The district is numbered.

The law provides in what manner districts shall be divided; that certain districts may be organized as graded school districts, in which boundaries shall not be changed except by consent of a majority of the trustees thereof, entered on the records of the district and filed with the clerk of the board of school inspectors of the township or city to which reports of the district are made.

Meetings:

The annual meeting of each school district is held on the first Monday in September in each year. The school year begins that day. Graded or high school districts, or districts organized by special act of the legislature may determine to hold the annual meeting on the second Monday in July. Special meetings may be called by the district board, or any of them, and it is their duty to call them on application of five legal voters of the district.

Notices of annual and of special meetings must be posted up in three of the most public places in the district, one being posted on the outer door of the district school house, six days previous to the date of meeting, and specifying the day, hour and place of such meeting. If the notice is of a meeting to establish or change the

site of a school house it must be a notice of ten days, and if it is a meeting called upon request, it must be called in not less than six nor more than twelve days from the time of the request.

At such a meeting all persons twenty-one years old and who have property liable to assessment for school taxes in the district, and who have lived in the district, or in territory belonging to the district at the time of the meeting, three months preceding the meeting, are qualified to vote on any subject before the meeting. And all parents or legal guardians of any children included in the school census of the district, who have the age and residence qualification just given, are entitled to vote on any question not directly involving the raising of money by tax.

At any meeting lawfully held the moderator presides, or a chairman is elected in his absence, and the director is secretary, or some one is elected in his place to keep the minutes of the meeting. The meeting has besides this the power to adjourn to some other time; to elect district officers; to designate a site or sites for school house or houses, or change them; to direct the purchasing or leasing of a site or sites lawfully determined upon, or the purchasing, hiring or building of a school house or school houses, or the enlarging of a site or sites previously established; to vote such tax as the meeting deems sufficient for the purposes named, but the amounts to be raised in any district for the purchasing or building a school house or houses, in the same year that any bonded indebtedness is incurred, are limited.

In districts containing fewer than ten children between the ages of five and twenty years, the limit is two hundred and fifty dollars; in districts having between ten

and thirty children, five hundred dollars; in districts having between thirty and fifty children of this age, one thousand dollars. Land, no portion of which lies within two and one-half miles of a school site, can not be taxed to build a school house.

The meeting also has power to impose a necessary tax to keep school buildings in repair, to provide necessary apparatus for the schools, and to pay district liabilities and debts lawfully incurred, and the services of district officers. For these purposes no tax can exceed one-half what the district might raise for building a school house.

The meeting may also authorize and direct the sale of any school house, site, building or other property of the district no longer needed for the use of the district; make any and all necessary directions concerning the prosecution or defense of any suit to which the district may be a party, or in which it may be interested; if building is decided upon, to appoint a building committee, with such powers as they may vote; at the first and annual meetings only to determine the length of time schools shall be taught in the district; to appropriate any surplus moneys arising from the one-mill tax, after having maintained a school in the district at least eight months in the school year, for building or repairing or enlarging school houses or sites, or for purchasing globes, maps, library, or other school apparatus, or for any incidental expenses of the school.

Moderator.

Presides, when present, at all the meetings of the district board; countersigns all orders legally drawn by the director upon the assessor, for moneys to be disbursed

by the district, and all warrants of the director upon the township treasurer for moneys raised for district purposes, or apportioned to the district by the township clerk; causes an action to be prosecuted on the assessor's bond, in case of any breach of any condition thereof.

Director.

Is the clerk of the district, and is required to keep a record of all the proceedings of district and board meetings, in a proper record book; he is required to give notice of the annual district meeting; to draw and sign all warrants upon the township treasurer for moneys belonging to the district, and orders upon the assessor for moneys to be disbursed by the district.

Each order must specify the fund upon which it is drawn, and the purpose of its expenditure. When directed by the district board, he draws and signs all contracts with teachers, and presents them to the other members of the board for signature.

He provides the necessary appendages for the school house, and keeps it in repair during the time school is taught therein; but can not purchase charts or other apparatus to be used in the school room without a vote of the district authorizing such purchase. He must keep an account of all expenses incurred by him as director, and his account is audited by the other members of the district board. He is also required to present to the annual meeting an estimate of district expenses to be provided for during the coming year. Unless some other person is appointed by the district board, it is the duty of the director to take the school census. This is done in the ten days preceding the first Monday in September in each year. When the census

is completed it is verified by the person taking it. The object of this census, we know, is to show what proportion of the public school moneys is to be given the school district. Previous to the second Monday in September the director is required to deliver to the township clerk, a report to the board of school inspectors of the township, which shows, the census aforesaid, the number under five and over twenty years, attending school, the number of non-resident pupils of the district, the whole number that have attended school, the length of time the school has been taught, names of teachers and wages paid, during the year.

Also showing the average length of time scholars, between five and twenty years of age, have attended school, the amount of money received from the township treasurer, and the amount raised by the district, and for what purposes.

To this is added, the kinds of books used in the schools, and such other facts and statistics regarding the subject of education and the schools as the superintendent of public instruction may direct.

Assessor.

The assessor is the treasurer of the district. He is required to file a bond satisfactory to the director and moderator. He pays out moneys on the proper orders of the director from the fund on which the order is drawn. He keeps an account of all money transactions for the district, making a report and statement at the close of each school year. He appears for the district in all suits by or against it, unless some other person has been designated by the district board. If he is himself interested in a suit or proceeding adversely to the dis-

trict, the moderator, in the absence of any other appointment, appears for the district.

Within the statutory limitations, and by a two-thirds vote of electors at the meeting, a school district may borrow money to pay for school-house sites, and erect and furnish school buildings. Bonds are issued by the district board in sums of not less than fifty dollars, drawing not to exceed eight per cent interest, and payable at such time or times as the district board may direct.

The director, assessor, and moderator constitute the district board. Offices are accepted by those elected to them, by filing written acceptances with the director.

The officers elected in the school district have no common law powers or rights; they are strictly confined to such as are given by the statute.

Suits are begun against school districts by summons, left with the assessor at least eight days before the return day.

Provisions of law are made for the selecting and condemning of school-house sites; for graded schools in districts having a certain number of school children; for libraries; for the examination of teachers and the general supervision of schools.

QUESTIONS.

What is a school district? How formed? By whom formed? How designated? By whom altered? The size? Are they corporations? What are their powers? Name them fully? Tell how a school district is organized. What are the offices in a school district? How are they elected? When is a district organized? Is there any legal presumption in favor of school district

organization? When? What is a fractional school district? How formed? How designated? To what township are reports made? What can you tell about school district meetings? What is a graded school? When may they be instituted? Give a full abstract of what is said about meetings. Tell how money for district purposes is raised, how voted, and how much can be voted. Name the district officers and the duties of each. Tell how district money is disbursed.

CHAPTER IX.

CITIES AND VILLAGES.

It is readily understood that when portions of territory become thickly populated the ordinary powers of township government do not adequately meet public wants. General laws operate in cities and villages as elsewhere, but there are many matters connected with the efficient preservation of the life, liberty, and property of the citizens of a thickly inhabited community which require special laws not applicable elsewhere. Then, under the principle of local self-government, greater local powers or powers over a greater variety of subjects must be given the people of such communities. Fire departments, sewers, gas, paving, water supply, police, regulation of selling and buying, sidewalks, hotels, public meetings and public buildings, ferries, vehicles used to transport people and property for hire, street railways, and a multitude of similar subjects

become important in thickly populated places, in addition to which there is a natural increase of vagrancy, drunkenness, vice, misdemeanors, and crimes of all sorts. To meet the increased expense of necessary local government, taxation must be increased. The reason for cutting such portions of territory from the rest of the township and erecting them into municipal corporations, rests, therefore, both in necessity and convenience. But the principles governing the use of legislative, executive, and judicial powers in cities and villages is the same as in townships. Such powers as are expressly or by necessary implication given these local communities, can be exercised by them. No others. The rights conferred are not vested rights, subject to such constitutional prohibitions as may exist; the legislature has complete control over these municipalities as state agencies, and may enlarge or restrict their powers, enlarge or limit territorial boundaries, and may even abolish the corporation entirely at its pleasure. The right to exist as a municipal corporation, to exercise the powers and franchises of one, can never, as against the state, grow or ripen into such rights as can not be taken away. Upon the other hand, municipal business can not be done by the legislature nor by officers appointed by the legislature. We therefore find these municipalities created by general or special act of the legislature, given legislative, executive, and judicial powers, with the right to elect officers, levy taxes, and, generally, to take care of the interests of the community.

The charter or general act under which the corporation is formed, is the constitution of the municipality. In it must be found authority for the exercise of all powers.

The legislative authority of cities and villages is usually reposed in a common council or body of persons usually known as such. The local legislative acts are called ordinances. Penalties for violation of ordinances may be fixed. Justices in cities, or some judicial officer or court superior to justices of the peace, are given authority to try and determine charges of violation of city ordinances.

A Mayor in a city and President in a village are the names of officers exercising the executive authority. Cities are divided into wards, and the inhabitants of each ward are usually allowed to, in some measure, take care of ward interests. Each ward is represented in the city government. City and village taxes are apportioned, as a rule, to the entire city or village. The county and state taxes are apportioned among the wards as among townships.

Cities have such representation upon the board of supervisors as may be given by the legislative authority.

Villages have no representation as villages or separate corporations in the board of supervisors.

The representation of cities upon this board is usually by wards, each ward being treated as a township, and entitled to the same representation. Sometimes cities have a greater representation for certain purposes than townships, as when, in addition to the representation from each ward, the city assessor or other officer is allowed a seat.

At general elections the inhabitants of villages vote with the township electors in the township in which they live. The usual officers of cities and villages are a mayor or president as executive officer; a clerk or recorder, to keep the city records and accounts; a treas-

urer, to keep and disburse the moneys of the corporation, and taxes received for other purposes—state and county. There is in a city some assessing officer to list property for taxation and spread necessary taxes. There may be a marshal, street commissioner, and officers of the fire department in either, and the necessary police forces.

QUESTIONS.

Write an abstract of this chapter.

What is a city? A village? Why are they created? What corporate powers have they? From what source do they get their powers? What legislative powers have they? Where is the legislative power reposed? What are the acts of the legislative authority called? What authority has the legislature over these municipalities? Name the usual city and village officers.

CHAPTER X.

ELECTIONS.

General Subject.

The general subject of elections seems more properly to fall under the head of civil government of the state than of the United States. It is in the state that the citizen exercises the right to vote. Though the right is exercised in the local subdivisions of the state, treatment of the subject is better undertaken separately than in connection with the descriptions of municipalities.

Again, excepting as restrained and governed by a

general naturalization law, the power to pass which was delegated to Congress, and by such provisions as a majority of the states have put into the Constitution of the United States, and the acts of Congress upon the subject, the states determine who shall participate in elections. There, however, seems to be no doubt but that the Congress of the United States has the power, if it chooses to exercise it, to pass such laws as seem to it proper regarding the exercise of the right of suffrage in all elections for officers of the United States.

We have learned, in a general way, what political liberty is, and that it is said to exist in the United States. In theory the people of the states participate actively and directly in the affairs of government, and they do this by the exercise of the elective franchise. It is not, of course, true, that every person in the state has the right to vote. The elective franchise, or right to participate in affairs of government, is a right conferred by the sovereign power. It is a right, held in trust by those to whom it is given, to be exercised for the society—the public good. It is a right regarded and treated in law as a valuable one. Its exercise by one not entitled to exercise it, is a wrong to the public, to the state. To deprive one having the right, the privilege of exercising it properly, is a wrong, both public and private, and money damages may be recovered against one who knowingly and wilfully hinders, obstructs, or prevents the exercise of the right. This in addition to the penalties which the public may enforce for the same act.

The sovereign authority may confer this right upon whomsoever it pleases. It may, by constitutional methods, take the right or recall the right where it pleases, from any class exercising or possessing it.

It is essential that the right be exercised only by the persons or class of persons possessing it. It is also essential that in its exercise the lawful methods be observed.

Let us see, first, to whom the right belongs, and, second, something about the times, places, manner and purposes of exercising it.

Who may Vote.

Upon what persons, then, has the sovereign authority conferred this right?

Though each state establishes a rule for itself, there is yet a general similarity or uniformity in these rules. For example, citizenship, which would exclude aliens, is required in all the states. Women and minors are excluded in all the states from participating in general elections. Idiots and lunatics are, in some states, expressly excluded by constitutional provisions. It is generally understood that they can not exercise the right of suffrage, though not expressly excluded. Those persons in confinement for crimes and misdemeanors can not vote. In some states an alien, having declared his intention of becoming a citizen, may, after a certain residence, participate in elections. Paupers are excluded in many states, persons under guardianship in some, persons excused at their own request from paying taxes in New Hampshire. Persons who can not read in Connecticut, and persons who can not both read and write in Massachusetts. In some elections, persons who lack a specified property qualification are excluded, those who do not pay taxes, and those who have been convicted of infamous crimes.

Limitations Upon the State Power.

Article XIV of Amendments to the Constitution of

the United States provides that all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the states wherein they reside.

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. And in Article XV of Amendments, it is provided that the rights of citizens of the United States to vote shall not be denied or abridged by the United States, or by any state on account of race, color, or previous condition of servitude.

This first provision would seem to have this force. It is the general requirement in all states, that persons exercising the right of suffrage shall be citizens of the United States and of the state. Citizenship may be acquired in any state. Once acquired, no other state can question it. The second provision limits the right in the states to fix for themselves what classes of persons shall vote.

Provisions in Michigan Constitution.

Article VII of the Constitution of Michigan contains the restrictions upon legislative power. In brief, these provisions are: That every male citizen, twenty-one years old, who has resided in the state for three months, and in the township or ward ten days, next preceding an election, and every male inhabitant twenty-one years old, who has lived in the state two years and six months, and who has declared his intention to become a citizen six months preceding any election, may vote.

In addition, every male inhabitant residing in the state on the 24th day of June, 1835, and every male inhabitant who resided in the state January 1, 1850, and who declares or has declared his intention to become a

citizen six months previous to an election, are voters. No soldier, marine or seaman in the army or navy of the United States can gain a residence in the state by being stationed in any military or naval place within it.

Any person engaged in a duel, either as principal or as accessory before the fact, can not vote.

How an Alien may Become a Citizen.

It is a principle in the law of nations that the state has jurisdiction over its citizens, no matter where they may be, and that a citizen is under the protection of his own government everywhere and anywhere.

A citizen of one country or state can not well owe allegiance to more than one sovereignty at a time.

This power of the state over the citizen extends to preventing his removal from the territory of the state, and so long as the protection of some other power has not been gained, the government may, whenever it can get jurisdiction of the person of its citizens, punish them for having disobeyed the laws in removing beyond the realm or for any other disobedience.

It is not an uncommon thing for the state to provide a method by which people coming within its jurisdiction may, if desired, become citizens with most of the privileges of those born citizens. In the United States the provisions of law enacted upon this subject are given in title XXX of the Revised Statutes. Some of the provisions of the statute are not important to us now, they having been made for the time when, following the war of the Revolution, it was desired to make citizens without imposing restrictions. Those provisions now important are, in brief, that the alien desiring to become a citizen may do so by declaring his intention to do so on

oath, before the clerk of a circuit or district court of the United States, or a district or a supreme court of the territories, or a court of record of any state having common law jurisdiction and a clerk and seal.

This declaration must be made two years, at least, prior to his admission. In this declaration he must renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly, by name, to the prince, potentate, state or sovereignty of which he may be, at the time, a citizen or subject. At the time of his application to be admitted, he must declare on oath, before some one of the clerks of courts above specified, that he will support the Constitution of the United States, and that he absolutely renounces all allegiance and fidelity to every foreign prince, etc., and particularly to the prince, potentate, etc., of which he was before a subject or citizen, a record of which is to be made by the clerk of the court.

To the court admitting the alien it must be made to satisfactorily appear, that the alien has resided in the United States five years at least, and in the state or territory where the court is held, one year, at least; and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution, and well disposed to the good order and happiness of the United States. But the oath of the alien will not be admitted to prove his residence. That must be proved by other evidence. If the alien has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he must expressly renounce any such title or order, and that also is to be recorded by the clerk of the court.

An alien who has lived in the United States for three years next preceding his arriving at the age of twenty-one years, may, after attaining his majority, and after residing in the United States for five years, be admitted a citizen, without having made the declaration of intentions heretofore spoken of. He must, however, make the same declaration at the time of his admission, and declare, on oath, and prove to the satisfaction of the court, that for two years next preceding his application it has been his *bona fide* intention to become a citizen of the United States. When an alien, having made the declaration of intention required by law, dies before he is actually naturalized, the widow and children of the alien are considered as citizens upon taking the oaths prescribed by law. No alien, a native citizen or subject of any county with which the United States is at war at the time of making application for citizenship, can be admitted.

The children of persons naturalized being under the age of twenty-one years at the time the parents were naturalized, and dwelling within the United States are citizens, and the children of persons who are citizens of the United States, though born out of the limit of the United States, are considered citizens of the United States.

An alien, twenty-one years of age and upwards, who enlists or has enlisted in either the regular or volunteer armies of the United States, and is honorably discharged, may be admitted to citizenship on petition, without previous declaration of intention, and without proving more than one year's residence within the United States previous to the making this application.

Citizenship Forfeited.

Congress has forfeited the right to citizenship of all persons who deserted the army or navy of the United States and did not return to service or report themselves to a provost-marshal within sixty days after the President's proclamation dated March 11, 1865 ; but there is excepted from the operation of this law, so far as loss of citizenship and right to hold office is concerned, the soldiers and sailors who served until the 19th of April, 1865, and who then, without leave, quit their commands or refused to serve after that date. Such persons are not held to be deserters.

Provisions Governing the Exercise of the Elective Franchise.

Title XXVI of the revised statutes of the United States, is entitled of "the elective franchise." It is practically an act to preserve the purity of elections and to secure to every person having the right, the privilege of voting. It was passed to give effect to the provisions of the fifteenth amendment to the Constitution of the United States. Michigan with other states has, by legislation, provided for the exercise of the right of suffrage. The provisions of the law can not, of course, be given here.

It is evident that a right so great should be only exercised by those to whom it belongs, and that to them it should be made sure and effective.

A Secret Ballot.—We find, therefore, that in nearly every election provision is made for voting by ballot. Without speaking of the advantages of a paper ballot, printed or written, so far as concerns the depositing of the same, the ascertainment of the result and safety to

the voter, there is one privilege connected with voting which the law gives to all. It is the right to a secret ballot. While there seems to be no method of preventing persons voting an open ticket, or showing the ticket before voting to whomsoever they choose, the law accords the right to every man to vote a folded secret ticket, no one ever knowing for whom the elector expressed a choice.

Residence and Registration.

Back of or preceding the casting of the ballot are numerous provisions calculated to ensure the right to those entitled to it, and to none others. The most important of these relate to the domicile or residence of the citizen, and to the requirements of the registration laws. Briefly, a person is required, in order to vote at any election, from school district elections to the election of electors for the chief magistrate of the United States, to have acquired a residence in the district, ward, or township, where the right is to be exercised.

And that it may be known upon the day of election what persons are entitled to vote, it is required that electors shall before that time appear before a board of officers, called the board of registration, and there register their names and places of residence. Before allowing any one to register, this board is required to be satisfied that the party will have, on election day, all the qualifications of an elector. Age, nativity, naturalization, residence in the voting district, may all be inquired into, and the board should permit none to register except upon satisfactory showing of the right.

This is especially true in our state, where a person having registered is entitled upon election day to vote,

if challenged, upon taking the oath necessary to cover the ground upon which challenge is made. The board on election day have no discretion, provided the challenged party will take the prescribed oath. They are, however, required to number the ballot cast, upon its back, with the number of the elector on the poll-list; to paste over the number so written on a ballot a piece of paper, making the number invisible.

But the ballot is received and is counted. If, afterwards, the party challenged is accused of illegal voting, or if the election of any candidate declared by the board of canvassers to be elected, should be disputed in proper legal proceedings, the candidate for whom the elector voted may be known by the ballot cast and numbered, and, his vote being found, may be examined and a correct result arrived at.

Under certain circumstances, and upon a certain showing, an elector, sick, absent from home, or from the ward or township in which he votes, on the day of registration, may be allowed upon election day to register and vote.

To protect the people in the exercise of this right of election, penalties are imposed for illegal voting; for bribing a person to vote for any candidate; for refusing, willfully, to receive a proper vote, and for receiving, knowingly, an improper vote. These are in the interests of the public, and may be enforced by public prosecution.

To deprive a person knowingly of the right to vote at any election is, also, a private wrong for which an action will lie.

The object of all legislation upon the subject, it may be repeated, is to provide for an unbiased, intelligent

exercise of the right, by which the popular feeling, the voice of the people, is expressed, and an honest statement of the aggregate voice.

At an early day in our history as a nation, with a continent to people, the right of franchise was made to be easily acquired.

Restrictions upon aliens and native born were few and easily removed. In Michigan, and others of the western states, there were and are no restrictions of importance excepting the one of residence. As the population of the country increases, and interests grow more vast, an intelligent, patriotic use of the right to vote becomes more and more a necessity. In this state everything has been done possible, by an extensive and costly public school system, compulsory education and other means, to make those who will, intelligent citizens.

It is self-evident that in a government by the people, where all interests are at the will of the majority, every citizen should vote, not blindly, and ignorant of what may be accomplished if there should be a majority of his opinion, but should participate in governing the state, with a full knowledge of what are state needs.

Wise and honest rulers make good government.

This is as true when all rule as when one or a few have all the power.

Times of Holding Elections.

What is known as the general election in this state is held each two years in the several wards and townships, on the Tuesday succeeding the first Monday in November. At this election the people of the state choose, in the years they are required to be chosen, the electors for President and Vice-President of the United States. The people also

elect a governor, a lieutenant governor, secretary of state, state treasurer, auditor general, attorney general, superintendent of public instruction, commissioner of the state land office, members of the state board of education, representatives in Congress, and senators and representatives in the state legislature, judges of probate, sheriff, clerks, treasurers, registers of deeds, prosecuting attorneys, circuit court commissioners, coroners.¹

Notices of Election.—Between the first day of July and the first day of September preceding a general election, the secretary of state is required to prepare and cause to be delivered to the sheriff of each county in the state, a notice, in writing, stating what officers are to be elected at the next general election. He also, in the same time, must deliver to the sheriff a written notice stating the number of senators and representatives to be elected in each county, specifying the number of each district, and the limits of each district when there is more than one in the county. When a special election is ordered by the governor, the secretary of state delivers to the sheriff of each of the counties in the election district a notice of the time of holding such election, the cause of vacancy in the office, the name of the officer and the time when his term of office will expire. When the sheriff receives any such notice he is required to cause a notice in writing to be delivered to the clerk of each township, and one of the inspectors of election in each ward in any city in his county. This notice must contain the substance of that received from the secretary of state. If there is more than one senatorial or representative district in the county, he delivers in each one

¹See Howell's Statutes, Chap 9, for "Special Elections."

only so much of the notice as applies to that district. The sheriff also notifies the same officers, at least twenty days before the general election, what county officers are to be chosen. The township clerk and the inspector receiving such notices from the sheriff are required to give ten days' notice, in writing, posted up in at least three of the most public places in the township, stating the time and place at which such election is to be held, and the officers to be chosen. Unless the township board otherwise direct the place of holding the election is the place of holding the last preceding township meeting.

Inspectors of Election.—At the general election the supervisor, the justice of the peace not holding the office of supervisor or town clerk, whose term of office soonest expires, and the town clerk of each township, and the assessor and alderman or two aldermen in each ward in a city, are the inspectors of election, two of them constituting a quorum. If the town clerk is present, he shall be a clerk of the election, and one other is appointed by the inspectors. If the town clerk is absent two clerks are appointed by the inspectors. The inspectors in cities appoint two competent persons as clerks. Each clerk and inspector is required to take the constitutional oath of office which any inspector may administer. Polls are opened at eight o'clock in the forenoon and closed at five in the afternoon.

The polls may be adjourned one hour at noon in the discretion of the board. The inspectors are required to make proclamation of the opening and closing of the polls, and of each adjournment. The inspectors take the ballots, folded. It must be a paper ticket, containing in writing or printing the name of the persons for

whom the elector intends to vote and the office for each person.

The vote must be given by the elector in person, in the township or ward where he resides. The inspectors are not permitted to examine ballots, to ascertain who is voted for. A ballot cast by mistake can not be withdrawn, nor can the elector again vote because of the mistake.

The Canvass.—After polls are closed, the canvass or count of votes must be at once proceeded with. The law concerning this is mandatory. The count must be public; the result publicly and officially declared; the ballots sealed up, and the canvass concluded entirely before any adjournment can be had. If two or more ballots are found folded together so as to present the appearance of a single ballot, both must be destroyed. An error in spelling a name, not changing the sound, will not destroy a ballot. Thus, *Finegan* may be counted for *Finnegan*. The designation of the person intended to be voted for by initials is not sufficient. No explanation or evidence can be received by the board or anywhere to show the intention of the voter. It must be proved by his ballot. The board can only canvass and declare the result of the ballots found in the boxes. When a slip is used, it must be so placed on the ticket as to show beyond any question for whom the vote was cast for any office.

The ballots must correspond in number to the number of persons shown by the poll list to have voted.

If there is an excess of ballots they must be replaced in the box, and one of the inspectors must publicly draw out and destroy, unopened, the excess.

A statement of the result and one of the poll lists is

given to the township clerk; in cities to the city clerk, and one poll list to the county clerk. A statement is also delivered to one of the inspectors appointed to attend the county canvass. The county board of canvassers can not go behind the returns made by the election inspectors or city inspectors and canvassers. Their duties are merely ministerial. They are to determine the result of the vote as appears from the returns.

No person can be declared elected unless he has more votes for an office than any other person. And this is true, though the person having the highest vote is ineligible to the office. The determination of the board is not conclusive. But their determination and certificate is *prima facie* evidence of election and title to the office, and the certificate awarded entitles the holder to perform the duties of the office, until the action of the board is reviewed by judicial proceedings and reversed.

There is no space to use in describing the method of canvassing in representative, senatorial, judicial and congressional districts. We know something already of the work done by the state canvassers.

The same principles apply in every case.

Spring Elections.

All officers are not chosen at the general election. Circuit judges, supreme court justices, regents of the university, are among the state officers chosen at the spring elections, held on the first Monday in April. We have seen what township officers are chosen at the town meetings.

In cities and villages it is usual to elect city and village officers in the spring. Charter elections, as they are called, are not all held on the same day, depending,

of course, upon the provisions in this respect found in the charter of the municipality.

But there is little, if any, difference in respect to the forms pursued in the registration of electors, the voting and canvass of votes.

QUESTIONS.

Why is it proper to treat of elections in the part on state rather than the part of this work devoted to United States Government?

Where do citizens vote? What authority determines the qualification of electors? Subject to what restrictions?

What is the purpose of voting? What is accomplished by the use of the elective franchise? Of what importance is it that the citizen may vote? Can every person in the state vote? Why not? How is the right conferred? By what authority?

Once conferred, is the right to vote a valuable one? In what respects? Suppose one is deprived of the right to vote, how and in what respects has a wrong been committed? A wrong to whom? Upon whom may the right be conferred? From whom may it be taken?

Write an abstract of what is said, showing who may vote. Is there similarity and uniformity in the general provisions in the different states? What persons are universally excluded from any participation in general elections? What persons from voting at all elections? What is a minor? An alien? Give examples of provisions in different states.

Give in your own way the provisions in the Constitution of the United States upon this subject. Give those in the Michigan Constitution? Tell how an alien may

become a citizen. What occasion is there for naturalization laws? Why should Congress make them? What provisions in the United States laws about forfeiting citizenship? What provision is there in the Michigan Constitution upon the same subject? Tell what provision is made for a secret ballot and why it is made. Give as many reasons for it as occur to you. Write an abstract of what is said about the registration and residence of electors. Why is registration important? Are there any penalties for illegally voting or preventing from voting? What is the object of the legislation upon the subject? Why should there be an intelligent, honest ballot?

Write an abstract of what is said upon the time of holding elections. Of *Notices of Election*. Of *Inspectors of Election*. Of *The Canvass*. What officers are elected at the April elections?

Write a brief abstract of the chapter.

CHAPTER XI.

TAXATION.

One of the necessary means to perpetuate and carry on government is money. The government, the whole society, can no more make money than can individuals. The power of the sovereign authority to take from the people what is needed for public purposes has never been questioned. The manner of doing this, however, has frequently been oppressive and unjust. We need

not repeat what history has written. With civil liberty the rights of the citizen were better respected; with political liberty, the citizen had a voice in saying how, and to what extent, public burdens should be borne. In Michigan the people are sovereign. The policy of taxation, and the manner of levying and collecting taxes, are whatever a majority will.

So far as the power is concerned, the state may tax whom and what it will. It may select such persons or classes of persons, property and classes of property, as it pleases, to bear the public burdens. It may tax lightly to encourage one industry, and tax heavily to control or suppress a particular business.

There are some principles connected with the taxing power which have grown with government. Some of these are expressed in the constitutions, federal and state. Some exist or are given effect in any system of taxation, others grow out of the relations between the federal and state governments and the exercise of proper powers by each. Some of these may be given :

First. And this has been already stated, the policy of taxation is entirely with the legislature. With our division of the powers of government, the courts have nothing to do with the question of what property shall be taxed nor to what extent it shall be taxed. The courts exercising the power given to them, will see to it that so far as constitutional restrictions have been imposed upon the power and manner of taxing, those restrictions are enforced. *Second.* The levying of all taxes must be for public purposes only. With this question the courts have something to do. What purposes are public is a question of law, and not of legislative policy. For instance, the state can not vote taxes in aid

of private enterprises. The Supreme Court of Michigan has held that towns can not vote aid to railroad corporations ; that a tax for the purpose of aiding in the building of a railroad can not lawfully be laid.¹ And the purpose must be a public one as regards the authority or body voting the tax. We have seen that counties and other municipal divisions of the state determine what taxes shall be laid within their respective limits. Manifestly, the board of supervisors of a county can not vote a tax upon property in another county. Neither can it authorize a tax upon the county to assist a city within the limits of the county to build a city hall. The city hall may be to the city a public necessity, to build which the proper authority might very properly lay taxes. But, so far as the county is concerned, it might as well lay and collect taxes to be given to some individual. It has been held competent for the legislature to authorize a town to tax itself to aid in the erection of a state educational institution in the town. The purpose was a public one as regarded the state at large, and the town was allowed to assume a special burden on the ground of special and peculiar benefits.

Third. The property of citizens of other states owning property and doing business in the state, can not be taxed upon a basis requiring them to pay greater taxes than are imposed upon citizens of the state owning the same property or conducting the same kind of business. This restriction upon the taxing power is imposed by the Federal Constitution.² Corporations are not citizens within the meaning of this clause, and a corporation may be obliged to submit to such taxes as the state sees

¹ See *People v. Salem*, 20 Mich., 452.

² Art. 4, Sec. 2, Const. U. S.

fit to impose as a condition of doing business in the state. This is no violation of the privileges and immunities of stockholders who reside in other states.

Fourth. A tax which has the effect to impair the obligation of a contract can not be laid.¹ It has been held incompetent to tax in one state contracts owned in another, though payable in the state imposing the tax, and secured on property therein situate.

Fifth. A state can not impose a tax on imports nor exports. Commerce is regulated by Congress.² A tax upon freight taken up within a state and carried out of it, or taken up out of a state and carried into it, is held to be a tax upon commerce between states, though no distinction is made between freight carried wholly within the state, and that carried out of or brought into it. An importer of foreign goods can not, as such, be subject to state taxation. But when the articles he has imported have passed from his hands, they may be taxed even though they are still in the original package.³

Sixth. Taxes laid must be uniform. This does not mean that all property must be taxed alike. But, recognizing the authority of the legislature to exempt certain classes of property from taxation, all property subject to the same general tax must be valued and taxed uniformly.

Seventh. A state can not tax agencies or property of the United States. If the state could tax at all, it might tax so as to interfere with the exercise of powers properly belonging to the United States, and so curtail its powers, or tax them out of existence.

¹ Art I, Sec. 10, Const. U. S.

² Art. I, Sec. 8, Const. U. S.

³ See Cooley on Taxation, Chap. III, and cases cited in notes.

Eighth. While the legislature of the state has all the power of taxation, not withheld or limited in the federal and state constitutions, the state municipalities have only delegated powers. The extent and limit of the legislative powers given these corporations, have been explained. There are no intendments in favor of the power. The power to vote any particular tax must be conferred. But, it is generally understood, that for such purposes as they are created, they may tax.

Ninth. Another principle which is always recognized as governing the manner of taxing is, that as respects the time and manner of taxing, and the amounts to be paid, they shall be fixed and certain.

Tenth. Taxes are, as a rule, demanded in money. For the purpose of keeping common highways in repair, labor assessments may be made. Excepting these, all taxes in Michigan are collected in money.

Constitutional Provisions.

In Michigan the important provisions are: *First.* Every law which imposes, continues or revives a tax, shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object. *Second.* All assessments hereafter authorized shall be on property at its cash value. *Third.* The legislature shall provide an uniform rule of taxation, except on property paying specific taxes, and taxes shall be laid on such property as shall be prescribed by law. *Fourth.* The legislature may provide for the collection of specific taxes, from banking, railroad, plank road and other corporations hereafter created. *Fifth.* No person shall be deprived of life, liberty or property, without due process of law.

The citizen is, of course, entitled to have the same methods followed in the passing of a bill for raising money that govern legislation generally.

Let us see how, in Michigan, the taxes are collected. And first, we will see what kinds of taxes, or what apportionment of taxes has been made. Taxes are not all laid simply for purposes of revenue. Taxes or burdens in the nature of taxes are laid, which have in view the good order of the society ; the regulation of rights and duties as between individuals ; the encouragement of industry and the discouragement of pernicious employments and business. The authority imposing this sort of taxes is called the *police power*. In the chapter under that head the subject will be more fully treated.

There are also taxes levied by special assessments. The general levy of taxes is understood to be to exact contributions in return for the benefits of government. Special assessments are made upon the assumption that a portion of the community is to be specially benefitted.

The proposed improvement is supposed to benefit a portion of the community by enhancing the value of property, etc., and the persons realizing the benefit are required to bear additional burdens in respect to it.

Instances of this sort of taxation are seen in the taxes laid for paving streets, for sewers, drains, sidewalks, and the like improvements. Such taxes need not be imposed upon property in accordance with its cash value, though there must be uniformity in the manner of laying the tax. A paving tax assessed upon property in proportion to frontage on the street paved, is a manner of apportioning the tax approved by the courts.

Where a ditch is dug through a township, a jury,

empannelled for the purpose use their best judgment as to the percentage of benefit which will accrue to particular pieces of property.

A portion of the expense of administering the laws is paid in fees to officers. Justices of the peace, in civil causes, are paid entirely by the parties litigating. So are the officers of the court. An entry or county fee is required to be paid in civil cases in the circuit courts and in the supreme court. The fees of sheriffs, clerks of courts, stenographers, and other officers are paid by the individual requiring services. In criminal cases these fees are paid from the public treasury.

It is the purpose here to examine more particularly the manner of levying and collecting general taxes. Under the authority to levy specific taxes, railroad and insurance, plank road, mining, telegraph, and other corporations doing business in the state are taxed upon the business done. Reports of the business are made to certain state officers, as has been learned, and the legislature having determined the percentage to be paid, there is nothing to be done but to calculate the tax and receive it.¹

What Property is Taxed.

All property within the jurisdiction of the state, not expressly exempt is subject to taxation. Personal property for the purposes of taxation, includes all goods and chattels within the state ; all ships, boats, and vessels belonging to inhabitants of the state, wherever they are ; all goods, chattels and effects belonging to inhabitants of the state situate without the state, excepting property actually and permanently invested in business

¹The receipts into the state treasury to the credit of the specific tax fund for the fiscal year ending Sept. 30, 1882, were \$676,941.09.

in another state ; all indebtedness due inhabitants of this state, above the amounts owed by them, whether such indebtedness is due from individuals or from corporations, and whether such debtors reside in or out of the state ; all shares in corporations organized under the laws of the state, when the property is not exempt from taxation or is not taxable to itself ; all shares in banks organized in this state under any law of the United States, but from the value of shares is deducted the value of all the real estate taxed to the bank ; all shares in foreign corporations, except national banks, owned by inhabitants of this state ; all moneys ; all annuities and royalties ; all interests owned by individuals in lands, the fee of which is in the state or United States. Shares in corporations, the property of which is taxable to itself, are not assessed to the shareholder.

The following property is *exempt* from taxation : *First.* Public property belonging to the United States, the state, to counties, cities, villages, townships and school districts, except lands purchased by the state at tax sales held by it.

There could be no purpose in taxing that property which the people by taxation have purchased for public use. The money to pay the taxes would have to be raised by taxation.

Second. The personal property of library, benevolent, charitable, and scientific institutions incorporated under the laws of the state, and such real estate as is occupied by them for the purposes for which they are incorporated. Many of these corporations can not buy or sell or hold real estate except for the use of the corporation in carrying out its objects. But if not so restricted by charter or general law, then such real

estate as is held for gain or bought by investing corporate funds, and not actually occupied by the corporation for its purposes, must be taxed as other property is taxed.

Third. All houses of public worship, with the land on which they stand, the furniture therein and all rights in the pews. The parsonage owned by any religious society and occupied as such. The custom of exempting this class of property from public burdens is quite universal. More recently it has come to be criticized.

Fourth. Lands used exclusively as burial grounds; right of burial in them; tombs and monuments erected. But the stock of a corporation owning a burying ground is taxed, and so are vaults and tombs built and kept for rent, in whole or in part.

Fifth. Library or school books of the value of one hundred and fifty dollars; the personal apparel of every individual; all family pictures. The reason for this discrimination is plain and need not be given.

Sixth. Furniture and utensils in use in any dwelling-house, of the value of two hundred dollars; musical instruments not exceeding in value one hundred and fifty dollars; other personal property owned and used by any *householder* in connection with his house or business, of the value of two hundred dollars.

Seventh. The personal and real estate of persons who, in the opinion of the supervisor, are, by reason of poverty, unable to contribute towards public charges.

Voting the Tax.

There must be a determination by the proper authorities of the amount of tax to be raised for each purpose.

This determination, we have seen, is an exercise of legislative power. For the purposes of the state government, the state legislature votes the taxes. It also fixes the limits within which local bodies and the people of localities, exercising legislative powers, may vote taxes.

These votes are all made upon estimates of probable public necessities and expenditures.

We have seen that estimates and various reports are required to be furnished to the legislature. Like reports, and reports of expenditures are required from all state institutions. Some of these institutions receive money from persons enjoying their benefits. This, of course, lessens the public burden. The following table shows the general taxes by name, some of the purposes for their use, and the authority voting the taxes.

STATE TAX—VOTED BY THE STATE LEGISLATURE.

For State Indebtedness.¹

For Public Expenditures, in building, etc.

¹Michigan, practically, has no indebtedness. In October, 1880, the debt outstanding was less than one million dollars, while the balance to the credit of the sinking fund, which was a fund provided for in the Constitution of the state to meet state indebtedness, was over one million, two hundred thousand dollars. Up to the year 1881, the specific taxes, excepting those received from mining companies in the upper peninsula, had been devoted, under the Constitution, to the payment of the interest upon the primary school, university, and other educational funds, and the interest and principal of the state debt in the order named. This was to continue until the extinguishment of the state debt, other than the debt to educational funds, when these specific taxes were to be added to and constitute a part of the primary school interest fund. In January, 1881, the Supreme Court held that the state debt was practically extinguished, and ordered the surplus of specific taxes paid to the primary school fund. See Const. Mich. Art. XIV, Secs. 1, 2; Auditor General *v.* State Treasurer, 45 Mich., 161.

For State Institutions.	Penal and Reformatory.	State Prison at Jackson. State House of Correction at Ionia. Reform school for girls at Adrian. Industrial school for boys at Lansing.
	Charitable Institutions.	Asylum for the Insane, at Kalamazoo and Pontiac. Asylum for the Deaf and Dumb, at Flint. Asylum for the Blind, at Lansing. State Public School, at Coldwater.
	Educational Institutions.	State Normal School, at Ypsilanti. State University, at Ann Arbor. State Agricultural College, at Lansing.
Salaries.	{ State Officers and Clerks. Circuit and Supreme Court Judges, and Officers of Courts. Officers and Employés of various State institutions. Members of the Legislature.	

COUNTY TAXES.—THE BOARD OF SUPERVISORS—THE PEOPLE OF THE COUNTY.

For County Indebtedness, judgments, bonds, etc.

For necessary County Buildings, repairs, etc.

Salaries.	{ Sheriff. Clerk. Treasurer. Prosecuting Attorney. Judge of Probate. Keeper of Poorhouse and Farm. Supervisors.
	{ Of Sheriffs, Constables and Justices for services in criminal cases. Of Jurors, in Circuit Courts, and in Justices' Courts, in criminal cases. Witnesses in criminal cases.
Expenses of boarding prisoners at County jail—paid to Sheriff.	
Poorhouse and farm—under County system of caring for poor, County aid to indigent persons not in poorhouse.	

TOWN TAXES.—THE PEOPLE OF THE TOWNSHIP—THE TOWNSHIP BOARD.

Township Indebtedness and interest thereon.

Salaries of township officers.

Township buildings, parks, burying grounds, pounds, jail.

HIGHWAY TAXES.

Where assessed in money; or,

Highway taxes over and above the labor assessed.

SCHOOL TAXES.¹

One mill tax—by the Legislature, general law.

Other School taxes—the people of the School District.	{	Teachers' wages. Necessaries for schoolhouse. New schoolhouse; repairs; enlarging. New schoolhouse site.
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CITY TAXES.—BY THE COMMON COUNCIL OF THE CITY—THE PEOPLE OF THE CITY.

VILLAGE TAXES.

By the Board of Trustees or
Common Council.

By the inhabitants of the Village.

{	In both municipalities the taxes are for the expenses and necessary improvement of the municipality: buildings, water - works, paving, gas, salaries of city officers, cost of city administration, jails, police, fire department, cemetery, costs incurred in enforcing municipal ordinances, pounds, public health, cross walks.
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Apportioning the Tax.

The state, county, township and school taxes having been voted, there yet remains the apportionment and

¹ Under the existing laws, there was transferred to the primary school interest fund, from the specific tax fund, under the Supreme Court decision before referred to, \$314,044.98. During the fiscal year ending Sept. 30, 1882, there was paid in apportionments to counties from the primary school interest fund, \$639,068.47. The amount distributed will naturally increase from year to year for some time to come. When all the school lands have been sold no more accessions can come from that source. Fines collected for violations of state laws are devoted to the support of township libraries, unless otherwise ordered by the township board of the township, or the board of education of the city. But they must be used for either library or school purposes. Fines collected for violation of city ordinances are not included in the meaning of the constitutional provision.

spreading of the taxes. This we have seen must be done uniformly. As the local agencies and officers collect not only local but state taxes, there must be an apportionment of the tax among the several municipal divisions of the state.

To begin at the first steps in this direction, we find the supervisor in each township and the assessor in each city preparing a list of the taxable property in the township and city. This list the assessing officer makes by passing around through the township or city, calling upon the inhabitants, requiring from them statements of the taxable property possessed by them, real and personal, and using whatever knowledge or means of knowledge he has to get a correct statement. Property owned by persons resident in the community is assessed to them by name. Property owned by non-residents is assessed in a separate part of the roll. There is carried out opposite the name of each person assessed the descriptions of real estate owned, with a valuation, in cash, placed upon each separate parcel by the assessing officer. The personal estate of the taxpayer is also valued and placed on the roll, but the specific articles of personalty are not enumerated.

The roll, when completed, is called the assessment roll.

After being completed, a certain number of days are allowed for inspection and review of the rolls by the taxpayers. The purpose is to allow any mistakes in the rolls to be corrected. During these days the supervisor, and two taxpaying electors of the township, appointed by the township board, sit as a board of review. They meet on the Tuesday next following the third Monday in May, at the office of the supervisor. At this meeting,

and during the week, this board examines the roll, and may of its own motion add to the roll the names of persons, the value of personal property, and the descriptions and value of real estate omitted from the roll. The board passes on each valuation and enters the valuation fixed by it in a separate column. The board also meets at the same place on the fourth Monday in May, and continues in session that day and the day following, and as much longer as is necessary to complete the review of the assessment roll, not exceeding five days in all. Any person complaining of his assessment may be examined on oath. After the review is completed, the board, or a majority of them, are required to indorse a statement thereon to the effect that it is the assessment roll of the town for the year.

At the regular meeting of the board of supervisors in each county these rolls are present.

The board examines the rolls of the several townships and cities and equalizes them. That is, they are required to ascertain whether the assessments of real estate in the several townships and wards of the county, as made by the assessing officers, are relatively equal.

If they are not, the board adds to or deducts from the aggregate assessed valuation of each township and ward such an amount as will make the assessments of real estate equal. Not that anything is added to or deducted from the rolls themselves, or that any change is made in them. But, for the purpose of apportioning the state and county taxes among the townships and wards, a basis has to be arrived at for the action of the board in making the apportionment. Record is made of the action of the board by its clerk. The valuation put upon each township by the board is called the equalized

valuation of the township. The aggregate of the equalized valuations of each township and ward is the equalized valuation of the county.

In every fifth year the board equalizes the rolls in June. The aggregate is transmitted to the state board of equalization. That board, as we have seen, adds to or deducts from the aggregate valuation of each county such an amount as will, in its opinion, make the valuation of counties relatively equal. Upon the values as fixed by the state board, the state tax is apportioned by the auditor general among the several counties. The board of supervisors of each county apportion the state and county taxes among the several wards and townships, each township and ward paying such a proportion of the state and county taxes as its equalized valuation bears to the aggregate equalized valuation of the county. A record of this apportionment is made and a certificate showing the action of the board is furnished the supervisor and the township clerk and the clerks of cities.

The taxes voted by the township and township board upon the township, are certified to the supervisor by the town clerk. School taxes voted, he learns about from the same official. Having thus a completed assessment roll, and the several amounts to be raised upon the taxable property of the township, the supervisor or assessor makes out a tax roll.

This is a copy of the assessment roll as corrected by the board of review and board of supervisors, and carried out opposite each description of property and opposite the valuation of personalty, is spread, in separate columns, the proportion of tax to be paid. Each tax has a separate column. State, county, town,

highway, school, and any special taxes appear separately upon the roll.

The tax roll being completed, the supervisor endorses upon it or attaches to it a warrant. This warrant commands the treasurer of the township to collect from the persons named in the roll the total amount set opposite their respective names, within a certain number of days. Authorizes him to enforce collection, if it is refused, by distress and sale of goods and chattels. Tells him to what funds the money shall be credited and what amount for state and county taxes shall be paid over to the county treasurer. The roll is delivered to the treasurer. The county treasurer charges him with the amount of state and county taxes; the township clerk charges him with the amount of other taxes.

The law provides upon what days he shall be at his office for the purpose of receiving taxes.

In practice, the township and city treasurers, or city collectors, collect such taxes as are paid. Sometimes a sale of goods is made to enforce payment. They keep out, from the whole amount collected, the amount of local general taxes. They return to the county treasurer the surplus moneys and a list of such lands as are delinquent for non-payment of taxes. The amount of the delinquent taxes and of money paid is credited to the township and city treasurers. Such taxes as are not paid to the county treasurer after this return are, with enough money to make good the state taxes, returned to the auditor general, at Lansing. Taxes may be paid at the auditor general's office, or at the county treasurer's office, up to the day of sale and on the day of the sale hereinafter spoken of.

There is always returned to the auditor general's

office a list of lands from each county delinquent for taxes. Some are owned by residents and some by non-residents of the state. In the place of the contribution asked for, the state has nothing but the right to sell the lands for the amount of the tax.

The methods which *should* be used by the state to enforce the payment of taxes, to secure its revenues from those not willing or not able to pay, must always be the subject of grave differences of opinion. All agree that some way must be provided by which the taxes shall be collected. In the end, if taxes could not in some way be collected, one-half, or fewer, perhaps, of the people in each township would bear all the public burdens.

There are always some who will not and some who can not pay. It has been the practice in Michigan, after allowing a certain time for redemption, to sell lands delinquent for taxes to the highest bidder. Rather, to sell as little of the land returned as the bidder will take and pay the tax. These sales have been made at the office of the county treasurer, that officer conducting the sales. For lands bid off at the sale a certificate was given, which, after time for redemption had expired, would entitle the purchaser or his assigns to a tax deed from the state. Lands not bid by individuals have been struck to the state, which held the titles for sale to any person desiring to purchase and pay the taxes and charges. The titles acquired under these sales are what are known as tax titles.

Under the present law a longer interval before sale is given than formerly, and a proceeding in the circuit court in chancery for the various counties is had. Opportunity is given to parties to appear and show reasons

against the validity of the tax. If none are shown, or those shown are not considered good, a decree is entered for the sale of such interest in the land as the bidder will take and pay the taxes. In most cases this sale is, under the law, a final transfer of the property in fee to the bidder.

There are some grounds upon which the sale may be opened or set aside. It is impossible to state the requirements of the tax laws. It is proper to say that the courts require that tax proceedings shall, in all essential matters, follow the law strictly and exactly. Tax titles have been held of but little account in this state, not because the law has not been a proper one, but because it has been the rule that somewhere in the action of bodies and officers, voting, assessing, apportioning, or collecting the taxes, rules made for the benefit and protection of the taxpayer, have been persistently, and, it would seem, systematically disregarded.¹

It can be said not only of general tax laws and the levying and collecting of general taxes, but of all special assessments of taxes, and, indeed, of all proceedings where the result may be to deprive the citizen of his property, that, first, the law authorizing and directing the proceedings must be framed with due regard to the principles regarding private rights, which underlie and are incorporated into our federal and state constitutions. Second, that in executing the laws made, no right or privilege of the citizen can be cut off. There

¹The present tax law was passed in 1882. The first sales of lands under this law took place in May, 1884. Immediately a case was carried to the Supreme Court of the State, in which the constitutionality of the law was attacked. That case is still undecided. This fact will account, in part, for the lack of statement regarding the present tax laws.

are irregularities in official action, which do not prejudice any one's right. But there must be careful compliance with all essentials.

There is but one way for any public officer to perform the duties imposed on him. That is to follow the law. There is no reason why the proceedings to levy and collect taxes should not be conducted in such a way, that, giving all possible leniency to the delinquent, in the end the title passed would be perfect.

QUESTIONS.

What is taxation? The necessity for it? Can you give some historical examples of unjust and oppressive taxation? Is the power to tax a sovereign power? Extent of the power? Is the power restricted in Michigan? By what? What authority decides upon the policy of taxation? To what extent can the courts control taxation? For what purposes only may taxes be laid? Why? Tell what you can about the public purposes for which any municipality may levy taxes. Give illustrations. Give the restrictions upon state taxation found in the Federal Constitution. What do you understand is meant by an uniform rule of taxation? Illustrate your idea.

What authority to tax have state municipalities? What is a municipal corporation? What rule has become to be universally recognized here in any system of taxation? Illustrate the rule. In what commodity are taxes demanded to be paid? Exceptions? Give the Michigan constitutional provisions relating to taxation. Are there any excepting those given in the text? Examine the constitution and see if there are not some others which directly or indirectly apply? What do

you understand by *apportionment* of taxes? What taxes are not laid for revenue? What reason is there for laying any taxes except upon a revenue basis? Give your own ideas about this. Under what power are some taxes laid? Give some illustrations of taxing under the police power of the state? What do you understand by general assessments or general taxes? What by special taxes? Illustrate. Upon what basis must special taxes be laid? Need it be upon a basis of cash valuation? Can you give any reasons for this? Do we pay taxes except to the regular tax collector? What are specific taxes? Tell, generally, what property in Michigan is subject to taxation. What property is excepted? Tell about the voting of the tax. What authority votes the state tax? Why? For what purposes is it to be used? Name some of the objects to support which state taxes are levied.

What authority votes county taxes? When do the people vote county taxes? To what extent may the county authorities or the people vote taxes? What authority fixes the limit? What right has the legislature of the state to limit municipal taxation? Tell by what authority town taxes are voted. City taxes? Village taxes? Give, in your own way, a description of the manner in which taxes voted are apportioned to particular property. What officers receive taxes? In what manner is payment enforced? Tell about the sales of lands for taxes. What can you say about the protection which should be afforded private rights in the levying and collecting of taxes? Give your own ideas about what a proper tax law should provide.

CHAPTER XII.

POLICE POWER OF THE STATE.

There is another recognized power in the states "which, like that of taxation, pervades every department of business and reaches to every interest and every subject of profit or enjoyment. We refer to what is known as the police power. The police of a state, in a comprehensive sense, embraces its system of internal regulation, by which it is sought not only to preserve the public order and to prevent offenses against the state, but also to establish for the intercourse of citizen with citizen those rules of good manners and good neighborhood which are calculated to prevent a conflict of rights, and to insure to each the uninterrupted enjoyment of his own, so far as is reasonably consistent with a like enjoyment of rights by others."¹ It is one of the maxims of government that "all property is held subject to those general regulations which are necessary to the common good and general welfare."

Exercise of the Power.

The exercise of this power in the states has been left with the states and can not be taken from them and exercised by Congress. But a state can not, in the exercise of this power, interfere with any of the powers of Congress. The power to establish police regulations may be, and is, delegated to municipal corporations.

¹ Cooley Const. Limitations, 572.

There may be exercise of the power by the Federal authority within the limits of powers delegated to it.

Power Exercised for Precaution and Prevention.

Police measures are very largely precautionary or preventive. That is, they have for their aim and object the constant maintenance of public order, and enforcing respect of private and public rights. Perhaps a better idea can be given of what the power is by giving instances of its exercise, approved by the courts. Exercising this power, the state, and its municipal divisions, may control and regulate the public use of navigable waters; may regulate the grade of railways and prescribe how they shall cross each other; may regulate the speed of trains at highways and other crossings; require the locomotive whistle to be sounded or bell rung; may make quarantine laws and health regulations of every description, though they go to the extent of destroying private property infected with disease; may make regulations for the use of highways; provide for the destruction of private property to prevent the spread of a fire; forbid the erection of wooden buildings within certain limits in cities; forbid further burials in cemeteries in thickly settled parts of cities; regulate the keeping, transporting and handling of gunpowder and such noxious things; require that poisonous drugs when sold, shall be labelled, the label showing the antidote for the poison; provide for the inspection of meats and provisions kept for sale and the condemnation of such as are unwholesome; make prohibitory liquor laws, for prevention of intemperance and crime; regulate the dealing in liquors; prohibit the keeping of swine in thickly populated portions of a community, and slaughter

houses and such kinds of business as are injurious to the public; forbid the sale of indecent and obscene books and prints; regulate the hours of labor of women and children in factories. In short, by this "general police power of the state, persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the state; of the perfect right in the legislature to do which, no question ever was, or, upon acknowledged general principles, ever can be made, so far as natural persons are concerned." ¹

Limitations Upon Police Power.

Laws which the legislature assumes to pass in the exercise of the police power, can not, of course, contravene any constitutional provisions. So of the regulations made by municipal corporations. The legislature can not delegate to a municipality a right which it does not possess.

The greatest number of questions raised regarding the exercise of police power, have been under the provisions in the United States Constitution forbidding the passing of laws which violate the obligations of contracts, and giving the right to regulate commerce, to Congress. Under the first of these it has been repeatedly held by the courts that all contracts and rights are held subject to this power. That regulations which affect them may not only be established but may be changed by a state. We have learned, elsewhere, that a legislative grant to a corporation may be a contract which gives inviolable rights. But it has been held that

¹ Redfield, Ch. J., in *Thorpe v. Rutland & Burlington R. R. Co.*, 27 Vermont 149. See generally on the subject Chap. XVI, of Cooley's Constitutional Limitations.

such a charter does not imply an undertaking on the part of the state, that the rights conferred can only be exercised in the manner permissible when granted, and under regulations then existing. The rights stand on the same footing as to the proper rules for their regulation, protection and enjoyment as the rights and privileges of citizens in general.

But, the regulations must have reference to the comfort, safety, or welfare of society ; must not be in conflict with any provisions of the charter, and must not take from the corporation any essential rights given by the charter.¹

To illustrate, if a corporation is chartered with the right to take tolls from passengers, a law allowing certain classes of persons to go free, would be void. But, it has been held, in cases where the legislature had reserved the right to amend, alter and repeal the charter of a railroad company, that a law establishing the maximum rate per mile of charges for carrying freight and passengers, was not unconstitutional. And this power is upheld even though there is no reserved right of amendment in granting the charter. So laws punishing neglect and misconduct in operating railroads and ferries, are held proper, and laws allowing recoveries for injuries for neglect of proper regulations.

Where power is delegated to a municipal corporation to make police regulations, such regulations, can not, of course, have any force or effect outside of the limits of the municipality. A state law requiring the master of every vessel engaged in foreign commerce to pay a certain sum to a state officer for every passenger brought from a foreign country into the state, was held

¹ Cooley, Const Lim., 577.

void as a law regulating commerce. So was a state law imposing a special tax on every Chinese person over eighteen years of age, for each month's residence in California; and a law of Maryland, requiring an importer of foreign goods by the package or bale, to take out a license and pay fifty dollars for it.

But, a law of New York, requiring the master of every vessel arriving from a foreign port, to report to the mayor an account of his passengers, was sustained. The object being to prevent New York from being burdened by an influx of persons from foreign countries and other states, and that the necessary precautions to prevent them becoming chargeable as paupers, might be taken.

Quarantine and health laws are sustained, and state regulation of pilots and pilotage.

Laws requiring all persons to refrain from pursuing ordinary callings on the first day of the week are police regulations, and are not unconstitutional as a restraint upon trade and commerce.

Penalties for Violating Police Regulations.

The authority making proper regulations under the police power, may impose penalties for the violation of the regulations. Penalties imposed by state laws, as upon the commission of crimes, are enforced in the courts having jurisdiction of the offense. We have seen that in cities there may be municipal courts erected for the purpose of administering the law in these cases.

“Whether the prohibited act or omission shall be made a criminal offense, punishable under the general laws, or subject to punishments under municipal by-laws, or, on the other hand, the party be deprived of all

remedy for any right which, but for the regulation, he might have had against other persons, are questions which the legislature must decide.”¹

Taxes Under Police Power.

“The distinction between a demand of money under this power, and one made under the power to tax, is not so much one of form as of substance.” The proceedings may be the same in the two cases, though the purpose is essentially different.”²

We have seen that taxes laid need not be for revenue only, though the primary purpose is revenue. That is, that in the manner of levying and apportionment of the tax, regard may be had to regulation of affairs in the community.

Where revenue, however, is the primary object, it is taxation. Where regulation is the primary purpose, the case can be referred specially to the police power

Instances.

Assessments for constructing sidewalks in cities and populous communities. It is usual to give the municipality power not only to order the walks, but to prescribe the kind of materials to be used, and to itself construct walks if owners of property refuse to do so in the time given, the expense being collectible from the property owner or made a lien on his property. Assessments for building sewers; levee assessments, to protect country bordering on streams or bodies of water from overflow, generally looked upon as a species of local tax, but the duty might be imposed on residents or

¹ Cooley, Const. Lim., 750.

² Cooley on Taxation, 396.

property owners to turn out periodically and give personal attention and labor to the construction of these defenses.¹

Laws requiring owners of marshes and low lands to drain them, are proper exercise of police power.

One of the most common kinds of assessments for regulation is that upon the business or occupation of persons.

The limitation is one of discretion and policy, the question presented being whether the business or occupation is of the kind or character rendering regulation important for public protection.

In exercising this control the most common form of proceeding is to license the business or occupation, charging a license fee. A license is a privilege granted by the state. It may or may not be on payment of a valuable consideration.

To be a privilege it must give or grant some right which, without the grant, would not exist.

But the thing to be done need not be unlawful in itself. It may be prohibited in order to compel the taking of a license. The grant may be from the state directly or through a municipal corporation.

A municipal corporation has no inherent power to grant licenses. Its authority must come from the state.

Instances.

Marriage Licenses.—The object being to prevent marriages between improper persons, or against the will of those persons who ought to be consulted in the matter.

License to Sell Liquors.—It has been the uniform

¹ Cooley on Taxation, 402.

custom to subject this business to regulation, as a business dangerous to public peace and public morals.

Lotteries are usually licensed. License is often required for the keeping of dogs, often for revenue, usually to have some person responsible for every animal of the kind protected by the law. *Hackmen, draymen, hawkers, auctioneers, transient persons selling goods, billiard and pool tables and rooms*, are instances of places and employments usually prohibited unless licensed. If a license fee is required, to that extent the business is taxed under police power.

The license is usually issued by some ministerial officer of the state or municipality. The number of licenses to be granted to any particular kind of business may be limited.

A common measure is to reserve authority to recall or revoke licenses if the rights conferred are not exercised as they should be. Bonds for the proper exercise of the right conferred are often required.

QUESTIONS.

Tell what you can about the police power of the state — what it means. Where does it come from? How long has it existed? What is embraced in the power?

Upon what maxim in government is the power founded? Is it exercised by federal or state authority? For what purpose is it particularly exercised? Give illustrations. Give the limitations upon the power. Under what constitutional provisions are laws made under the right most often questioned? Tell what you can about this. Give illustrations. Can you think of others? May penalties be imposed for violating police

regulations? What would a regulation of the kind be worth if no penalty was imposed? Write an abstract of what is said about taxes imposed under this power.

What is the difference between a tax for revenue and one for regulation? Under what power is a tax for revenue imposed? Give illustrations of assessments under the police power. What is a license? May it be for revenue only? What authority grants licenses? May the authority be delegated? To what bodies? Give instances of licensed occupations. By whom issued?

CONSTITUTION OF THE STATE OF MICHIGAN.

The People of the State of Michigan do Ordain this Constitution :

ARTICLE I.

BOUNDARIES.

The State of Michigan consists of and has jurisdiction over the territory embraced within the following boundaries, to-wit: Commencing at a point on the eastern boundary line of the State of Indiana, where a direct line drawn from the southern extremity of Lake Michigan to the most northerly cape of the Maumee Bay shall intersect the same, said point, being the northwest corner of the State of Ohio, as established by act of Congress, entitled "An act to establish the northern boundary line of the State of Ohio, and to provide for the admission of the State of Michigan into the Union upon the conditions therein expressed," approved June fifteenth, one thousand eight hundred and thirty-six; thence with the said boundary line of the State of Ohio till it intersects the boundary line between the United States and Canada in Lake Erie; thence with said boundary line between the United States and Canada through the Detroit River, Lake Huron, and Lake Superior, to a point where the said line last touches Lake Superior; thence in a direct line through Lake Superior to the mouth of the Montreal river; thence through the middle of the main channel of the said river Montreal to the head waters thereof; thence in a direct line to the center of the channel between Middle and South Islands, in the Lake of the Desert; thence in a direct line to the southern shore of Lake Brule; thence along said southern shore, and down the river Brule to the main channel of the Menominee river; thence down the center of the main channel of the same to the center of the most usual ship channel of the Green Bay of Lake Michigan; thence through the center of the most usual ship channel of the said bay to the middle of Lake Michigan; thence through the middle of Lake Michigan to the northern boundary of the State of Indiana, as that line was established by the act of Congress of the nineteenth of April, eighteen hundred and sixteen; thence due east with the northern boundary line of the said State of Indiana to the northeast corner thereof; and thence south with the eastern boundary line of Indiana to the place of beginning.

ARTICLE II.

SEAT OF GOVERNMENT.

SEC. 1. The Seat of Government shall be at Lansing, where it is now established,

ARTICLE III.

DIVISIONS OF THE POWERS OF GOVERNMENT.

SEC. 1. The powers of Government are divided into three departments; the Legislative, Executive, and Judicial.

SEC. 2. No person belonging to one department shall exercise the powers properly belonging to another, except in the cases expressly provided in this Constitution.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

SEC. 1. The Legislative power is vested in a Senate and House of Representatives.

SEC. 2. The Senate shall consist of thirty-two members. Senators shall be elected for two years, and by single districts. Such districts shall be numbered from one to thirty-two, inclusive; each of which shall choose one Senator. No county shall be divided in the formation of Senate districts, except such county shall be equitably entitled to two or more Senators.

SEC. 3. The House of Representatives shall consist of not less than sixty-four, nor more than one hundred members. Representatives shall be chosen for two years, and by single districts. Each Representative district shall contain, as nearly as may be, an equal number of inhabitants, exclusive of persons of Indian descent who are not civilized, or are members of any tribe, and shall consist of convenient and contiguous territory; but no township or city shall be divided in the formation of a Representative district. When any township or city shall contain a population which entitles it to more than one Representative, then such township or city shall elect, by general ticket, the number of Representatives to which it is entitled. Each county hereafter organized, with such territory as may be attached thereto, shall be entitled to a separate Representative, when it has attained a population equal to a moiety of the ratio of representation. In every county entitled to more than one Representative, the board of supervisors shall assemble at such time and place as the Legislature shall prescribe, and divide the same into Representative districts equal to the number of Representatives to which such county is entitled by law, and shall cause to be filed in the offices of the Secretary of State and clerk of such county, a description of such Representative districts, specifying the number of each district and population thereof, according to the last preceding enumeration.

SEC. 4. The Legislature shall provide by law for an enumeration of the inhabitants in the year eighteen hundred and fifty-four, and every ten years thereafter; and at the first session after each enumeration so made, and also at the first session after each enumeration by the authority of the United States, the Legislature shall re-arrange the Senate districts and apportion anew the Representatives among the counties and districts, according to the number of inhabitants, exclusive of persons of Indian descent who are not civilized, or are members of any tribe. Each apportionment, and the division into Representative districts by any board of supervisors, shall remain unaltered until the return of another enumeration.

SEC. 5. Senators and Representatives shall be citizens of the United States, and qualified electors in the respective counties and districts which they represent. A removal from their respective counties or districts shall be deemed a vacation of their office.

SEC. 6. No person holding any office under the United States [or this State], or any county office, except notaries public, officers of the militia, and officers elected by townships, shall be eligible to or have a seat in either house of the Legislature; and all votes given for any such persons shall be void.

SEC. 7. Senators and Representatives shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest. They shall not be subject to any civil process during the session of the Legislature, or for fifteen days next before the commencement and after the termination of each session. They shall not be questioned in any other place for any speech in either house.

SEC. 8. A majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each house may prescribe.

SEC. 9. Each house shall choose its own officers, determine the rules of its proceedings, and judge of the qualifications, elections, and returns of its members; and may, with the concurrence of two-thirds of all the members elected, expel a member. No member shall be expelled a second time for the same cause, nor for any cause known to his constituents antecedent to his election. The reason for such expulsion shall be entered upon the journal, with the names of the members voting on the question.

SEC. 10. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The yeas and nays of the members of either house, on any question, shall be entered on the journal at the request of one-fifth of the members elected. Any member of either house may dissent from and protest against any act, proceeding, or resolution which he may deem injurious to any person or the public, and have the reason of his dissent entered on the journal.

SEC. 11. In all elections by either house, or in joint convention, the votes shall be given *viva voce*. All votes or nominations to the Senate shall be taken by yeas and nays, and published with the journal of its proceedings.

SEC. 12. The doors of each house shall be open, unless the public welfare requires secrecy. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than where the Legislature may then be in session.

SEC. 13. Bills may originate in either house of the Legislature.

SEC. 14. Every bill and concurrent resolution, except of adjournment, passed by the Legislature, shall be presented to the Governor before it becomes a law. If he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it originated, which shall enter the objections at large upon their journal, and reconsider it. On such reconsideration, if two-thirds of the members elected agree to pass the bill, it shall be sent with the objections to the other house, by which it shall be reconsidered. If approved by two-thirds of the members elected to that house, it shall become a law. In such case the vote of both houses shall be determined by yeas and nays; and the names of the members voting for and against the bill shall be entered on the journals of each house respectively. If any bill be not returned by the Governor within ten days, Sundays excepted, after it has been presented to him, the same shall become a law, in like manner as if he had signed it, unless the Legislature, by their adjournment, prevent its return; in which case it shall not become a law. The Governor may approve, sign, and file in the office of the Secretary of State, within five days after the adjournment of the Legislature, any act passed during the last five days of the session; and the same shall become a law.

SEC. 15. The compensation of the members of the Legislature shall be three dollars per day for actual attendance, and when absent on account of sickness, but the Legislature may allow extra compensation to the members from the territory of the Upper Peninsula, not exceeding two dollars per day during the session. When convened in extra session, their compensation shall be three dollars a day for the first twenty days, and nothing thereafter; and they shall legislate on no other subjects than those expressly stated in the Governor's proclamation, or submitted to them by special message. They shall be entitled to ten cents and no more for every mile actually traveled, going to and returning from the place of meeting, on the usually traveled route; and for stationery and newspapers, not exceeding five dollars for each member during any session. Each member shall be entitled to one copy of the laws, journals, and documents of the Legislature of which he was a member; but shall not receive, at the expense of the State, books, newspapers, or other perquisites of office, not expressly authorized by this Constitution.

SEC. 16. The Legislature may provide by law for the payment of postage on all mailable matter received by its members and officers during the sessions of the Legislature, but not on any sent or mailed by them.

SEC. 17. The President of the Senate and the Speaker of the House of Representatives shall be entitled to the same per diem compensation and mileage as members of the Legislature, and no more.

SEC. 18. No person elected a member of the Legislature shall receive any civil appointment within this State, or to the Senate of the United States, from the Governor, the Governor and Senate, from the Legislature, or any other State authority, during the term for which he is elected. All such appointments, and all

votes given for any person so elected for any such office or appointment, shall be void. No member of the Legislature shall be interested, directly or indirectly, in any contract with the State, or any county thereof, authorized by any law passed during the time for which he is elected, nor for one year thereafter.

SEC. 19. Every bill and joint resolution shall be read three times in each house, before the final passage thereof. No bill or joint resolution shall become a law without the concurrence of a majority of all the members elected to each house. On the final passage of all bills, the vote shall be by yeas and nays, and entered on the journal.

SEC. 20. No law shall embrace more than one object, which shall be expressed in its title. No public act shall take effect or be in force until the expiration of ninety days from the end of the session at which the same is passed, unless the Legislature shall otherwise direct by a two-thirds vote of the members elected to each house.

SEC. 21. The Legislature shall not grant nor authorize extra compensation to any public officer, agent, or contractor, after the service has been rendered or the contract entered into.

SEC. 22. The Legislature shall provide by law that the furnishing of fuel and stationery for the use of the State, the printing and binding the laws and journals, all blanks, paper, and printing for the executive departments, and all other printing ordered by the Legislature, shall be let by contract to the lowest bidder or bidders, who shall give adequate and satisfactory security for the performance thereof. The Legislature shall prescribe by law the manner in which the State printing shall be executed, and the accounts rendered therefor; and shall prohibit all charges for constructive labor. They shall not rescind nor alter such contract, nor release the person or persons taking the same, or his or their sureties, from the performance of any of the conditions of the contract. No member of the Legislature, nor officer of the State, shall be interested directly or indirectly in any such contract.

SEC. 23. The Legislature shall not authorize, by private or special law, the sale or conveyance of any real estate belonging to any person; nor vacate nor alter any road laid out by commissioners of highways, or any street in any city or village, or in any recorded town plat.

SEC. 24. The Legislature may authorize the employment of a chaplain for the State Prison; but no money shall be appropriated for the payment of any religious services in either house of the Legislature.

SEC. 25. No law shall be revised, altered, or amended, by reference to its title only; but the act revised, and the section or sections of the act altered or amended, shall be re-enacted and published at length.

SEC. 26. Divorces shall not be granted by the Legislature.

SEC. 27. The Legislature shall not authorize any lottery, nor permit the sale of lottery tickets.

SEC. 28. No new bill shall be introduced into either house of the Legislature after the first fifty days of a session shall have expired.

SEC. 29. In case of a contested election, the person only shall receive from the State per diem compensation and mileage, who is declared to be entitled to a seat by the house in which the contest takes place.

SEC. 30. No collector, holder, nor disburser of public moneys shall have a seat in the Legislature, or be eligible to any office of trust or profit under this State, until he shall have accounted for and paid over, as provided by law, all sums for which he may be liable.

SEC. 31. The Legislature shall not audit nor allow any private claim or account.

SEC. 32. The Legislature, on the day of final adjournment, shall adjourn at twelve o'clock at noon.

SEC. 33. The Legislature shall meet at the seat of government on the first Wednesday in January, in the year one thousand eight hundred and sixty-one, and on the first Wednesday of January in every second year thereafter, and at no other

place or time, unless as provided in the Constitution of the State, and shall adjourn without day at such time as the Legislature shall fix by concurrent resolution.

SEC. 34. The election of Senators and Representatives, pursuant to the provisions of this Constitution, shall be held on the Tuesday succeeding the first Monday of November, in the year one thousand eight hundred and fifty-two, and on the Tuesday succeeding the first Monday of November of every second year thereafter.

SEC. 35. The Legislature shall not establish a State paper. Every newspaper in the State which shall publish all the general laws of any session within forty days of their passage, shall be entitled to receive a sum not exceeding fifteen dollars therefor.

SEC. 36. The Legislature shall provide for the speedy publication of all statute laws of a public nature, and of such judicial decisions as it may deem expedient. All laws and judicial decisions shall be free for publication by any person.

SEC. 37. The Legislature may declare the cases in which any office shall be deemed vacant, and also the manner of filling the vacancy, where no provision is made for that purpose in this Constitution.

SEC. 38. The Legislature may confer upon organized townships, incorporated cities and villages, and upon the board of supervisors of the several counties, such powers of a local, legislative, and administrative character as they may deem proper.

SEC. 39. The Legislature shall pass no law to prevent any person from worshipping Almighty God according to the dictates of his own conscience, or to compel any person to attend, erect, or support any place of religious worship, or to pay tithes, taxes, or other rates for the support of any minister of the gospel or teacher of religion.

SEC. 40. No money shall be appropriated or drawn from the Treasury for the benefit of any religious sect or society, theological or religious seminary, nor shall property belonging to the State be appropriated for any such purposes.

SEC. 41. The Legislature shall not diminish or enlarge the civil or political rights, privileges, and capacities of any person on account of his opinion or belief concerning matters of religion.

SEC. 42. No law shall ever be passed to restrain or abridge the liberty of speech or of the press; but every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of such right.

SEC. 43. The Legislature shall pass no bill of attainder, *ex post facto* law, or law impairing the obligation of contracts.

SEC. 44. The privilege of the writ of *habeas corpus* remains, and shall not be suspended by the Legislature, except, in case of rebellion or invasion, the public safety require it.

SEC. 45. The assent of two-thirds of the members elected to each house of the Legislature shall be requisite to every bill appropriating the public money or property for local or private purposes.

SEC. 46. The Legislature may authorize a trial by a jury of a less number than twelve men.

SEC. 47. The Legislature shall not pass any act authorizing the grant of license for the sale of ardent spirits or other intoxicating liquors.*

SEC. 48. The style of the laws shall be, "The people of the State of Michigan enact."

ARTICLE V.

EXECUTIVE DEPARTMENT.

SECTION 1. The executive power is vested in a Governor, who shall hold his office for two years. A Lieutenant Governor shall be chosen for the same term.

SEC. 2. No person shall be eligible to the office of Governor or Lieutenant Gov-

* Striken out by Legislature of 1875. Amendment approved by the people at the general election, 1876.

ernor, who has not been five years a citizen of the United States, and a resident of this State two years next preceding his election; nor shall any person be eligible to either office who has not attained the age of thirty years. ●

SEC. 3. The Governor and Lieutenant Governor shall be elected at the times and places of choosing the members of the Legislature. The person having the highest number of votes for Governor or Lieutenant Governor shall be elected. In case two or more persons shall have an equal and the highest number of votes for Governor or Lieutenant Governor, the Legislature shall, by joint vote, choose one of such persons.

SEC. 4. The Governor shall be Commander-in-Chief of the military and naval forces, and may call out such forces to execute the laws, to suppress insurrections, and to repel invasions.

SEC. 5. He shall transact all necessary business with officers of government, and may require information, in writing, from the officers of the executive department, upon any subject relating to the duties of their respective offices.

SEC. 6. He shall take care that the laws be faithfully executed.

SEC. 7. He may convene the Legislature on extraordinary occasions.

SEC. 8. He shall give to the Legislature, and, at the close of his official term, to the next Legislature, information by message of the condition of the State, and recommend such measures to them as he shall deem expedient.

SEC. 9. He may convene the Legislature at some other place, when the seat of government becomes dangerous from disease or a common enemy.

SEC. 10. He shall issue writs of election to fill such vacancies as occur in the Senate or House of Representatives.

SEC. 11. He may grant reprieves, commutations, and pardons after convictions, for all offenses except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to regulations provided by law, relative to the manner of applying for pardons. Upon conviction for treason, he may suspend the execution of the sentence until the case shall be reported to the Legislature at its next session, when the Legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall communicate to the Legislature at each session information of each case of reprieve, commutation, or pardon granted, and the reasons therefor.

SEC. 12. In case of the impeachment of the Governor, his removal from office, death, inability, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant Governor, for the residue of the term, or until the disability ceases. When the Governor shall be out of the State in time of war, at the head of a military force thereof, he shall continue Commander-in-Chief of all the military force of the State.

SEC. 13. During a vacancy in the office of Governor, if the Lieutenant Governor die, resign, be impeached, displaced, be incapable of performing the duties of his office, or absent from the State, the President *pro tempore* of the Senate shall act as Governor, until the vacancy shall be filled, or the disability cease.

SEC. 14. The Lieutenant Governor shall, by virtue of his office, be President of the Senate. In committee of the whole he may debate all questions; and when there is an equal division, he shall give the casting vote.

SEC. 15. No member of Congress, nor any person holding office under the United States, or this State, shall execute the office of Governor.

SEC. 16. No person elected Governor or Lieutenant Governor shall be eligible to any office or appointment from the Legislature, or either house thereof, during the time for which he was elected. All votes for either of them, for any such office, shall be void.

SEC. 17. The Lieutenant [Governor] and President of the Senate *pro tempore*, when performing the duties of Governor, shall receive the same compensation as the Governor.

SEC. 18. All official acts of the Governor, his approval of the laws excepted, shall be authenticated by the great seal of the State, which shall be kept by the Secretary of State.

SEC. 19. All commissions issued to persons holding office under the provisions of this Constitution shall be in the name and by the authority of the people of the State of Michigan, sealed with the great seal of the State, signed by the Governor, and countersigned by the Secretary of State.

ARTICLE VI.

JUDICIAL DEPARTMENT.

SECTION 1. The judicial power is vested in one Supreme Court, in circuit courts, in probate courts, and in justices of the peace. Municipal courts of civil and criminal jurisdiction may be established by the Legislature in cities.

SEC. 2. For the term of six years, and thereafter, until the Legislature otherwise provide, the judges of the several circuit courts shall be Judges of the Supreme Court, four of whom shall constitute a quorum. A concurrence of three shall be necessary to a final decision. After six years the Legislature may provide by law for the organization of a Supreme Court, with the jurisdiction and powers prescribed in this Constitution, to consist of one Chief Justice and three Associate Justices, to be chosen by the electors of the State. Such Supreme Court, when so organized, shall not be changed or discontinued by the Legislature for eight years thereafter. The Judges thereof shall be so classified that but one of them shall go out of office at the same time. Their term of office shall be eight years.

SEC. 3. The Supreme Court shall have a general superintending control over all inferior courts, and shall have power to issue writs of error, *habeas corpus*, *mandamus*, *quo warranto*, *procedendo*, and other original and remedial writs, and to hear and determine the same. In all other cases it shall have appellate jurisdiction only.

SEC. 4. Four terms of the Supreme Court shall be held annually, at such times and places as may be designated by law.

SEC. 5. The Supreme Court shall by general rules establish, modify, and amend the practice in such court and in the circuit courts, and simplify the same. The Legislature shall, as far as practicable, abolish distinctions between law and equity proceedings. The office of master in chancery is prohibited.

SEC. 6. The State shall be divided into judicial circuits; in each of which the electors thereof shall elect one circuit judge, who shall hold his office for the term of six years, and until his successor is elected and qualified. The Legislature may provide for the election of more than one circuit judge in the judicial circuit in which the city of Detroit is or may be situated, and the circuit judge or judges of said circuit, in addition to the salary provided by this Constitution, shall receive from said county of Wayne such additional salary as may from time to time be fixed and determined by the board of supervisors of said county.

SEC. 7. The Legislature may alter the limits of circuits, or increase the number of the same. No alteration or increase shall have the effect to remove a judge from office. In every additional circuit established, the judge shall be elected by the electors of such circuit, and his term of office shall continue, as provided in this Constitution for judges of the circuit court.

SEC. 8. The circuit courts shall have original jurisdiction in all matters, civil and criminal, not excepted in this Constitution, and not prohibited by law; and appellate jurisdiction from all inferior courts and tribunals, and a supervisory control of the same. They shall also have power to issue writs of *habeas corpus*, *mandamus*, *injunction*, *quo warranto*, *certiorari*, and other writs necessary to carry into effect their orders, judgments, and decrees, and give them a general control over inferior courts and tribunals within their respective jurisdictions.

SEC. 9. Each of the judges of the circuit courts shall receive a salary, payable quarterly. They shall be ineligible to any other than a judicial office during the

term for which they are elected, and for one year thereafter. All votes for any person elected such judge for any office other than judicial, given either by the Legislature or the people, shall be void.

SEC. 10. The Supreme Court may appoint a reporter of its decisions. The decisions of the Supreme Court shall be in writing, and signed by the judges concurring therein. Any judge dissenting therefrom, shall give the reasons of such dissent in writing, under his signature. All such opinions shall be filed in the office of the clerk of the Supreme Court. The judges of the circuit court, within their respective jurisdictions, may fill vacancies in the office of county clerk and of prosecuting attorney; but no Judge of the Supreme Court, or circuit court, shall exercise any other power of appointment to public office.

SEC. 11. A circuit court shall be held at least twice in each year in every county organized for judicial purposes, and four times in each year in counties containing ten thousand inhabitants. Judges of the circuit court may hold courts for each other, and shall do so when required by law.

SEC. 12. The clerk of each county organized for judicial purposes, shall be the clerk of the circuit court of such county. The Supreme Court shall have power to appoint a clerk for such Supreme Court.

SEC. 13. In each of the counties organized for judicial purposes, there shall be a court of probate. The judge of such court shall be elected by the electors of the county in which he resides, and shall hold his office for four years, and until his successor is elected and qualified. The jurisdiction, powers, and duties of such court shall be prescribed by law.

SEC. 14. When a vacancy occurs in the office of Judge of the Supreme, circuit, or probate court, it shall be filled by appointment of the Governor, which shall continue until a successor is elected and qualified. When elected, such successor shall hold his office the residue of the unexpired term.

SEC. 15. The Supreme Court, the circuit and probate courts of each county, shall be courts of record, and shall each have a common seal.

SEC. 16. The Legislature may provide by law for the election of one or more persons in each organized county, who may be vested with judicial powers, not exceeding those of a judge of the circuit court at chambers.

SEC. 17. There shall be not exceeding four justices of the peace in each organized township. They shall be elected by the electors of the townships, and shall hold their offices for four years, and until their successors are elected and qualified. At the first election in any township, they shall be classified as shall be prescribed by law. A justice elected to fill a vacancy shall hold his office for the residue of the unexpired term. The Legislature may increase the number of justices in cities.

SEC. 18. In civil cases, justices of the peace shall have exclusive jurisdiction to the amount of one hundred dollars, and concurrent jurisdiction to the amount of three hundred dollars, which may be increased to five hundred dollars, with such exceptions and restrictions as may be provided by law. They shall also have such criminal jurisdiction, and perform such duties, as shall be prescribed by the Legislature.

SEC. 19. Judges of the Supreme Court, circuit judges, and justices of the peace shall be conservators of the peace within their respective jurisdictions.

SEC. 20. The first election of judges of the circuit courts shall be held on the first Monday in April, one thousand eight hundred and fifty-one, and every sixth year thereafter. Whenever an additional circuit is created, provision shall be made to hold the subsequent elections of such additional judges at the regular election herein provided.

SEC. 21. The first election of judges of the probate courts shall be held on the Tuesday succeeding the first Monday of November, one thousand eight hundred and fifty-two, and every fourth year thereafter.

SEC. 22. Whenever a judge shall remove beyond the limits of the jurisdiction for which he was elected, or a justice of the peace from the township in which he

was elected, or by a change in the boundaries of such township shall be placed without the same, they shall be deemed to have vacated their respective offices.

SEC. 23. The Legislature may establish courts of conciliation, with such powers and duties as shall be prescribed by law.

SEC. 24. Any suitor in any court of this State shall have the right to prosecute or defend his suit, either in his own proper person, or by an attorney or agent of his choice.

SEC. 25. In all prosecutions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted. The jury shall have the right to determine the law and the fact.

SEC. 26. The person, houses, papers, and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation.

SEC. 27. The right of trial by jury shall remain, but shall be deemed to be waived in all civil cases, unless demanded by one of the parties in such manner as shall be prescribed by law.

SEC. 28. In every criminal prosecution, the accused shall have the right to a speedy and public trial by an impartial jury, which may consist of less than twelve men in all courts not of record; to be informed of the nature of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and have the assistance of counsel for his defense.

SEC. 29. No person, after acquittal upon the merits, shall be tried for the same offense. All persons shall, before conviction, be bailable by sufficient sureties, except for murder and treason, when the proof is evident or the presumption great.

SEC. 30. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless upon the testimony of two witnesses to the same overt act, or on confession in open court.

SEC. 31. Excessive bail shall not be required; excessive fines shall not be imposed; cruel or unusual punishment shall not be inflicted; nor shall witnesses be unreasonably detained.

SEC. 32. No person shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.

SEC. 33. No person shall be imprisoned for debt arising out of or founded on a contract, express or implied, except in cases of fraud or breach of trust, or of moneys collected by public officers, or in any professional employment. No person shall be imprisoned for a militia fine in time of peace.

SEC. 34. No person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief.

SEC. 35. The style of all process shall be: "In the name of the People of the State of Michigan."

ARTICLE VII.

ELECTIONS.

SECTION 1. In all elections, every male citizen, every male inhabitant residing in the State on the twenty-fourth day of June, one thousand eight hundred and thirty-five; every male inhabitant residing in the State on the first day of January, one thousand eight hundred and fifty, who has declared his intention to become a citizen of the United States, pursuant to the laws thereof, six months preceding an election, or who has resided in the State two years and six months, and declared his intention as aforesaid, and every civilized male inhabitant of Indian descent, a native of the United States, and not a member of any tribe, shall be an elector

and entitled to vote; but no citizen or inhabitant shall be an elector, or entitled to vote at any election, unless he shall be above the age of twenty-one years, and has resided in this State three months, and in the township or ward in which he offers to vote, ten days next preceding such election: *Provided*, That in time of war, insurrection, or rebellion, no qualified elector in the actual military service of the United States, or of this State, in the army or navy thereof, shall be deprived of his vote by reason of his absence from the township, ward, or State in which he resides; and the Legislature shall have the power, and shall provide the manner in which, and the time and place at which, such absent electors may vote, and for the canvass and return of their votes to the township or ward election district in which they respectively reside, or otherwise.

SEC. 2. All votes shall be given by ballot, except for such township officers as may be authorized by law to be otherwise chosen.

SEC. 3. Every elector, in all cases, except treason, felony, or breach of the peace, shall be privileged from arrest during his attendance at election, and going to and returning from the same.

SEC. 4. No elector shall be obliged to do military duty on the day of election, except in time of war or public danger; or attend court as a suitor or witness.

SEC. 5. No elector shall be deemed to have gained or lost a residence, by reason of his being employed in the service of the United States, or of this State; nor while engaged in the navigation of the waters of this State or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum at public expense; nor while confined in any public prison.

SEC. 6. Laws may be passed to preserve the purity of elections, and guard against abuses of the elective franchise.

SEC. 7. No soldier, seaman, nor marine in the army or navy of the United States, shall be deemed a resident of this State, in consequence of being stationed in any military or naval place within the same.

SEC. 8. Any inhabitant who may hereafter be engaged in a duel, either as principal, or accessory before the fact, shall be disqualified from holding any office under the Constitution and laws of this State, and shall not be permitted to vote at any election.

ARTICLE VIII.

STATE OFFICERS.

SECTION 1. There shall be elected at each general biennial election, a Secretary of State, a Superintendent of Public Instruction, a State Treasurer, a Commissioner of the Land Office, an Auditor General, and an Attorney General, for the term of two years. They shall keep their offices at the seat of Government, and shall perform such duties as may be prescribed by law.

SEC. 2. Their term of office shall commence on the first day of January, one thousand eight hundred and fifty-three, and of every second year thereafter.

SEC. 3. Whenever a vacancy shall occur in any of the State offices, the Governor shall fill the same by appointment, by and with the advice and consent of the Senate, if in session.

SEC. 4. The Secretary of State, State Treasurer, and Commissioner of the State Land Office, shall constitute a Board of State Auditors, to examine and adjust all claims against the State, not otherwise provided for by general law. They shall constitute a Board of State Canvassers, to determine the result of all elections for Governor, Lieutenant Governor, and State officers, and of such other officers as shall by law be referred to them.

SEC. 5. In case two or more persons have an equal and the highest number of votes for any office, as canvassed by the Board of State Canvassers, the Legislature in joint convention shall choose one of said persons to fill such office. When the

determination of the Board of State Canvassers is contested, the Legislature in joint convention shall decide which person is elected.

ARTICLE IX.

SALARIES.

SECTION 1. The Governor shall receive an annual salary of one thousand dollars; the Judges of the Circuit Court shall each receive an annual salary of two thousand five hundred dollars; the State Treasurer shall receive an annual salary of one thousand dollars; the Superintendent of Public Instruction shall receive an annual salary of one thousand dollars; the Secretary of State shall receive an annual salary of eight hundred dollars; the Commissioner of the Land Office shall receive an annual salary of eight hundred dollars; the Attorney General shall receive an annual salary of eight hundred dollars. They shall receive no fees or perquisites whatever for the performance of any duties connected with their offices. It shall not be competent for the Legislature to increase the salaries herein provided.*

ARTICLE X.

COUNTIES.

SECTION 1. Each organized county shall be a body corporate, with such powers and immunities as shall be established by law. All suits and proceedings by or against a county shall be in the name thereof.

SEC. 2. No organized county shall ever be reduced by the organization of new counties to less than sixteen townships, as surveyed by the United States, unless in pursuance of law a majority of electors residing in each county to be affected thereby shall so decide. The Legislature may organize a city into a separate county when it has attained a population of twenty thousand inhabitants, without reference to geographical extent, when a majority of the electors of a county in which such city may be situated, voting thereon, shall be in favor of a separate organization.

SEC. 3. In each organized county there shall be a sheriff, a county clerk, a county treasurer, a register of deeds and a prosecuting attorney, chosen by the electors thereof, once in two years, and as often as vacancies shall happen, whose duties and powers shall be prescribed by law. The board of supervisors in any county may unite the offices of county clerk and register of deeds in one office, or disconnect the same.

SEC. 4. The sheriff, county clerk, county treasurer, judge of probate and register of deeds shall hold their offices at the county seat.

SEC. 5. The sheriff shall hold no other office, and shall be incapable of holding the office of sheriff longer than four in any period of six years. He may be required by law to renew his security from time to time, and in default of giving such security his office shall be deemed vacant. The county shall never be responsible for his acts.

SEC. 6. A board of supervisors, consisting of one from each organized township, shall be established in each county, with such powers as shall be prescribed by law.

SEC. 7. Cities shall have such representation in the board of supervisors of the counties in which they are situated, as the Legislature may direct.

SEC. 8. No county seat once established shall be removed until the place to which it is proposed to be removed shall be designated by two-thirds of the board of supervisors of the county, and a majority of the electors voting thereon shall

* This article amended in 1882. Formerly the circuit judges received fifteen hundred dollars per annum. The amendment omitted all reference to the salary of the Auditor General, which has since been fixed by the Legislature at two thousand dollars per annum.

have voted in favor of the proposed location, in such manner as shall be prescribed by law.

SEC. 9. The board of supervisors of any county may borrow or raise by tax one thousand dollars, for constructing or repairing public buildings, highways, or bridges; but no greater sum shall be borrowed or raised by tax for such purpose in any one year, unless authorized by a majority of the electors of such county voting thereon.

SEC. 10. The board of supervisors, or in the county of Wayne the board of county auditors, shall have the exclusive power to prescribe and fix the compensation for all services rendered for, and to adjust all claims against their respective counties; and the sum so fixed or defined shall be subject to no appeal.

SEC. 11. The board of supervisors of each organized county may provide for laying out highways, constructing bridges, and organizing townships, under such restrictions and limitations as shall be prescribed by law.

ARTICLE XI.

TOWNSHIPS.

SECTION 1. There shall be elected annually, on the first Monday of April, in each organized township, one supervisor, one township clerk, who shall be *ex-officio* school inspector, one commissioner of highways, one township treasurer, one school inspector, not exceeding four constables, and one overseer of highways for each highway district, whose powers and duties shall be prescribed by law.

SEC. 2. Each organized township shall be a body corporate, with such powers and immunities as shall be prescribed by law. All suits and proceedings by or against a township shall be in the name thereof.

ARTICLE XII.

IMPEACHMENTS AND REMOVALS FROM OFFICE.

SECTION 1. The House of Representatives shall have the sole power of impeaching civil officers for corrupt conduct in office, or for crimes and misdemeanors; but a majority of the members elected shall be necessary to direct an impeachment.

SEC. 2. Every impeachment shall be tried by the Senate. When the Governor or Lieutenant Governor is tried, the Chief Justice of the Supreme Court shall preside. When an impeachment is directed, the Senate shall take an oath or affirmation truly and impartially to try and determine the same according to the evidence. No person shall be convicted without the concurrence of two-thirds of the members elected. Judgment, in case of impeachment, shall not extend further than removal from office; but the party convicted shall be liable to punishment according to law.

SEC. 3. When an impeachment is directed, the House of Representatives shall elect from their own body three members, whose duty it shall be to prosecute such impeachment. No impeachment shall be tried until the final adjournment of the Legislature, when the Senate shall proceed to try the same.

SEC. 4. No judicial officer shall exercise his office, after an impeachment is directed, until he is acquitted.

SEC. 5. The Governor may make a provisional appointment to a vacancy occasioned by the suspension of an officer, until he shall be acquitted, or until after the election and qualification of a successor.

SEC. 6. For reasonable cause, which shall not be sufficient ground for the impeachment of a judge, the Governor shall remove him on a concurrent resolution of two-thirds of the members elected to each House of the Legislature; but the cause for which such removal is required shall be stated at length in such resolution.

SEC. 7. The Legislature shall provide by law for the removal of any officer elected by a county, township, or school district, in such manner and for such cause as to them shall seem just and proper.

SEC. 8. The Governor shall have power and it shall be his duty, except at such times as the Legislature may be in session, to examine into the condition and administration of any public office, and the acts of any public officer, elective or appointed, to remove from office for gross neglect of duty, or for corrupt conduct in office, or any other misfeasance or malfeasance therein, either of the following State officers, to-wit: The Attorney General, State Treasurer, Commissioner of the Land Office, Secretary of State, Auditor General, Superintendent of Public Instruction, or members of the State Board of Education, or any other officer of the State, except legislature [legislative] and judicial, elective or appointed, and to appoint a successor for the remainder of their unexpired term of office, and report the causes of such removal to the Legislature at its next session.

ARTICLE XIII.

EDUCATION.

SECTION 1. The Superintendent of Public Instruction shall have the general supervision of public instruction, and his duties shall be prescribed by law.

SEC. 2. The proceeds of the sales of all lands that have been or hereafter may be granted by the United States to the State, for educational purposes, and the proceeds of all lands or other property given by individuals, or appropriated by the State for like purposes, shall be and remain a perpetual fund, the interest and income of which, together with the rents of all such lands as may remain unsold, shall be inviolably appropriated and annually applied to the specific objects of the original gift, grant, or appropriation.

SEC. 3. All lands, the titles to which shall fail from a defect of heirs, shall escheat to the State; and the interest on the clear proceeds from the sales thereof shall be appropriated exclusively to the support of primary schools.

SEC. 4. The Legislature shall, within five years from the adoption of this Constitution, provide for and establish a system of primary schools, whereby a school shall be kept without charge for tuition, at least three months in each year, in every school district in the State; and all instruction in said schools shall be conducted in the English language.

SEC. 5. A school shall be maintained in each school district at least three months in each year. Any school district neglecting to maintain such school, shall be deprived for the ensuing year of its proportion of the income of the Primary School Fund, and of all funds arising from taxes for the support of schools.

SEC. 6. There shall be elected in the year eighteen hundred and sixty-three, at the time of the election of a Justice of the Supreme Court, eight Regents of the University, two of whom shall hold their office for two years, two for four years, two for six years and two for eight years. They shall enter upon the duties of their office on the first of January next succeeding their election. At every regular election of a Justice of the Supreme Court thereafter, there shall be elected two Regents, whose term of office shall be eight years. When a vacancy shall occur in the office of Regent, it shall be filled by appointment of the Governor. The Regents thus elected shall constitute the Board of Regents of the University of Michigan.

SEC. 7. The Regents of the University, and their successors in office, shall continue to constitute the body corporate known by the name and title of "The Regents of the University of Michigan."

SEC. 8. The Regents of the University shall, at their first annual meeting, or as soon thereafter as may be, elect a President of the University, who shall be *ex-officio* a member of their Board, with the privilege of speaking, but not of voting. He shall preside at the meetings of the Regents, and be the principal executive officer of the University. The Board of Regents shall have the general supervision of the

University, and the direction and control of all expenditures from the University Interest Fund.

SEC. 9. There shall be elected at the general election in the year one thousand eight hundred and fifty-two, three members of a State Board of Education, one for two years, one for four years, and one for six years; and at each succeeding biennial election there shall be elected one member of such Board, who shall hold his office for six years. The Superintendent of Public Instruction shall be *ex-officio* a member and Secretary of such Board. The Board shall have the general supervision of the State Normal School, and their duties shall be prescribed by law.

SEC. 10. Institutions for the benefit of those inhabitants who are deaf, dumb, blind, or insane, shall always be fostered and supported.

SEC. 11. The Legislature shall encourage the promotion of intellectual, scientific, and agricultural improvement; and shall, as soon as practicable, provide for the establishment of an Agricultural School. The Legislature may appropriate the twenty-two sections of salt-spring lands now unappropriated, or the money arising from the sale of the same, where such lands have been already sold, and any land which may hereafter be granted or appropriated for such purpose, for the support and maintenance of such school, and may make the same a branch of the University, for instruction in agriculture and the natural sciences connected therewith and place the same under the supervision of the Regents of the University.

SEC. 12. The Legislature shall also provide for the establishment of at least one library in each township; and all fines assessed and collected in the several counties and townships for any breach of the penal laws, shall be exclusively applied to the support of such libraries, unless otherwise ordered by the township board of any township, or the board of education of any city: *Provided*, that in no case shall such fines be used for other than library or school purposes.

ARTICLE XIV.

FINANCE AND TAXATION.

SECTION 1. All specific State taxes, except those received from the mining companies of the Upper Peninsula, shall be applied in paying the interest upon the Primary School, University, and other educational funds, and the interest and principal of the State debt, in the order herein recited, until the extinguishment of the State debt, other than the amounts due to educational funds, when such specific taxes shall be added to and constitute a part of the Primary School Interest Fund. The Legislature shall provide for an annual tax, sufficient, with other resources, to pay the estimated expenses of the State government, the interest of the State debt, and such deficiency as may occur in the resources.

SEC. 2. The Legislature shall provide by law a sinking fund of at least twenty thousand dollars a year, to commence in eighteen hundred and fifty-two, with compound interest at the rate of six per cent per annum, and an annual increase of at least five per cent, to be applied solely to the payment and extinguishment of the principal of the State debt, other than the amounts due to educational funds, and shall be continued until the extinguishment thereof. The unfunded debt shall not be funded or redeemed at a value exceeding that established by law in one thousand eight hundred and forty-eight.

SEC. 3. The State may contract debts to meet deficits in revenue. Such debts shall not in the aggregate at any one time exceed fifty thousand dollars. The moneys so raised shall be applied to the purposes for which they were obtained, or to the payment of the debts so contracted.

SEC. 4. The State may contract debts to repel invasion, suppress insurrection, or defend the State in time of war. The money arising from the contracting of such debts shall be applied to the purposes for which it was raised, or to repay such debts.

SEC. 5. No money shall be paid out of the Treasury, except in pursuance of appropriations made by law.

SEC. 6. The credit of the State shall not be granted to, or in aid of, any person, association, or corporation.

SEC. 7. No scrip, certificate, or other evidence of State indebtedness shall be issued, except for the redemption of stock previously issued, or for such debts as are expressly authorized in this Constitution.

SEC. 8. The State shall not subscribe to, or be interested in, the stock of any company, association, or corporation.

SEC. 9. The State shall not be a party to, or interested in, any work of internal improvement, nor engaged in carrying on any such work, except in the expenditure of grants to the State of land or other property.

SEC. 10. The State may continue to collect all specific taxes accruing to the Treasury under existing laws. The Legislature may provide for the collection of specific taxes from banking, railroad, plank road, and other corporations hereafter created.

SEC. 11. The Legislature shall provide an uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law.

SEC. 12. All assessments hereafter authorized shall be on property at its cash value.

SEC. 13. The Legislature shall provide for an equalization by a State Board, in the year one thousand eight hundred and fifty-one, and every fifth year thereafter, of assessments on all taxable property, except that paying specific taxes.

SEC. 14. Every law which imposes, continues, or revives a tax, shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

ARTICLE XV.

CORPORATIONS.

SECTION 1. Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes. All laws passed pursuant to this section may be amended, altered, or repealed. But the Legislature may, by a vote of two-thirds of the members elected to each House, create a single bank, with branches.

SEC. 2. No general banking law shall have effect until the same shall, after its passage, be submitted to a vote of the electors of the State at a general election, and be approved by a majority of the votes cast thereon at such election.

SEC. 3. The officers and stockholders of every corporation or association for banking purposes, issuing bank notes or paper credits, to circulate as money, shall be individually liable for all debts contracted during the term of their being officers or stockholders of such corporation or association, equally and ratably to the extent of their respective shares of stock in any such corporation or association.

SEC. 4. For all banks organized under general laws, the Legislature shall provide for the registry of all bills or notes issued or put in circulation as money, and shall require security to the full amount of notes and bills so registered, in State or United States stocks, bearing interest, which shall be deposited with the State Treasurer for the redemption of such bills or notes, in specie.

SEC. 5. In case of the insolvency of any bank or banking association, the billholders thereof shall be entitled to preference in payment over all other creditors of such bank or association.

SEC. 6. The Legislature shall pass no law authorizing or sanctioning the suspension of specie payments by any person, association, or corporation.

SEC. 7. The stockholders of all corporations and joint stock associations shall be individually liable for all labor performed for such corporations or associations.

SEC. 8. The Legislature shall pass no law altering or amending any act of incorporation heretofore granted, without the assent of two-thirds of the members

elected to each house; nor shall any such act be renewed or extended. This restriction shall not apply to municipal corporations.

SEC. 9. The property of no person shall be taken by any corporation for public use, without compensation being first made or secured, in such manner as may be prescribed by law.

SEC. 10. No corporation, except for municipal purposes, or for the construction of railroads, plank roads, and canals, shall be created for a longer time than thirty years.

SEC. 11. The term "corporation," as used in the preceding sections of this article, shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations, not possessed by individuals or partnerships. All corporations shall have the right to sue, and be subject to be sued in all courts, in like cases as natural persons.

SEC. 12. No corporation shall hold any real estate hereafter acquired, for a longer period than ten years, except such real estate as shall be actually occupied by such corporation in the exercise of its franchises.

SEC. 13. The Legislature shall provide for the incorporation and organization of cities and villages, and shall restrict their powers of taxation, borrowing money, contracting debts and loaning their credit.

SEC. 14. Judicial officers of cities and villages shall be elected, and all officers shall be elected or appointed, at such time and in such manner as the Legislature may direct.

SEC. 15. Private property shall not be taken for public improvements in cities and villages without the consent of the owner, unless the compensation therefor shall first be determined by a jury of freeholders, and actually paid or secured in the manner provided by law.

SEC. 16. Previous notice of any application for an alteration of the charter of any corporation shall be given in such manner as may be prescribed by law.

ARTICLE XVI.

EXEMPTIONS.

SECTION 1. The personal property of every resident of this State, to consist of such property only as shall be designated by law, shall be exempted to the amount of not less than five hundred dollars, from sale on execution or other final process of any court, issued for the collection of any debt contracted after the adoption of this Constitution.

SEC. 2. Every homestead of not exceeding forty acres of land, and the dwelling-house thereon, and the appurtenances to be selected by the owner thereof, and not included in any town plat, city, or village; or instead thereof, at the option of the owner, any lot in any city, village, or recorded town plat, or such parts of lots as shall be equal thereto, and the dwelling-house thereon, and its appurtenances, owned and occupied by any resident of the State, not exceeding in value fifteen hundred dollars, shall be exempt from forced sale on execution or any other final process from a court, for any debt contracted after the adoption of this Constitution. Such exemptions shall not extend to any mortgage thereon, lawfully obtained; but such mortgage or other alienation of such land by the owner thereof, if a married man, shall not be valid without the signature of the wife to the same.

SEC. 3. The homestead of a family, after the death of the owner thereof, shall be exempt from the payment of his debts contracted after the adoption of this Constitution, in all cases, during the minority of his children.

SEC. 4. If the owner of a homestead die, leaving a widow but no children the same shall be exempt, and the rents and profits thereof shall accrue to her benefit during the time of her widowhood, unless she be the owner of a homestead in her own right.

SEC. 5. The real and personal estate of every female, acquired before mar-

riage, and all property to which she may afterwards become entitled by gift, grant, inheritance, or devise, shall be and remain the estate and property of such female, and shall not be liable for the debts, obligations, or engagements of her husband, and may be devised or bequeathed by her as if she were unmarried.

ARTICLE XVII.

MILITIA.

SECTION 1. The militia shall be composed of all able-bodied male citizens between the age of eighteen and forty-five years, except such as are exempt by the laws of the United States or of this State; but all such citizens, of any religious denomination whatever, who, from scruples of conscience, may be averse to bearing arms, shall be excused therefrom, upon such conditions as shall be prescribed by law.

SEC. 2. The Legislature shall provide by law for organizing, equipping, and disciplining the militia, in such manner as they shall deem expedient, not incompatible with the laws of the United States.

SEC. 3. Officers of the militia shall be elected or appointed, and be commissioned in such manner as may be provided by law.

ARTICLE XVIII.

MISCELLANEOUS PROVISIONS.

SECTION 1. Members of the Legislature, and all officers, executive and judicial, except such officers as may by law be exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of this State, and that I will faithfully discharge the duties of the office of ——— according to the best of my ability." And no other oath, declaration, or test shall be required as a qualification for any office or public trust.

SEC. 2. When private property is taken for the use or benefit of the public the necessity for using such property, and the just compensation to be made therefor, except when to be made by the State, shall be ascertained by a jury of twelve freeholders, residing in the vicinity of such property, or by not less than three commissioners, appointed by a court of record, as shall be prescribed by law;

Provided, The foregoing provision shall in no case be construed to apply to the action of commissioners of highways in the official discharge of their duty as highway commissioners.

SEC. 3. No mechanical trade shall hereafter be taught to convicts in the State Prison of this State, except the manufacture of those articles of which the chief supply for home consumption is imported from other states or countries.

SEC. 4. No navigable stream in this State shall be either abridged or dammed without authority from the board of supervisors of the proper county, under the provisions of law. No such law shall prejudice the right of individuals to the free navigation of such streams, or preclude the State from the further improvement of the navigation of such streams.

SEC. 5. An accurate statement of the receipts and expenditures of the public moneys shall be attached to and published with the laws at every regular session of the Legislature.

SEC. 6. The laws, public records, and the written judicial and legislative proceedings of the State, shall be conducted, promulgated, and preserved in the English language.

SEC. 7. Every person has a right to bear arms for the defense of himself and the State.

SEC. 8. The military shall, in all cases and at all times, be in strict subordination to the civil power.

SEC. 9. No soldier shall, in time of peace, be quartered in any house without the consent of the owner or occupant, nor in time of war except in a manner prescribed by law.

SEC. 10. The people have the right peaceably to assemble together to consult for the common good, to instruct their Representatives, and to petition the Legislature for redress of grievances.

SEC. 11. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this State.

SEC. 12. No lease or grant hereafter, of agricultural lands, for a longer period than twelve years, reserving any rent or service of any kind, shall be valid.

SEC. 13. Aliens who are, or may hereafter become, *bona fide* residents of this State, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property as native-born citizens.

SEC. 14. The property of no person shall be taken for public use, without just compensation therefor. Private roads may be opened in the manner to be prescribed by law; but in every case the necessities of the road and the amount of all damages to be sustained by the opening thereof, shall be first determined by a jury of freeholders; and such amount, together with the expenses of proceedings, shall be paid by the person or persons to be benefited.

SEC. 15. No general revision of the laws shall hereafter be made. When a reprint therefore becomes necessary, the Legislature, in joint convention, shall appoint a suitable person to collect together such acts and parts of acts as are in force and, without alteration, arrange them under appropriate heads and titles. The laws so arranged shall be submitted to two commissioners appointed by the Governor, for examination, and if certified by them to be a correct compilation of all general laws in force, shall be printed in such manner as shall be prescribed by law.

ARTICLE XIX.

UPPER PENINSULA.

SECTION 1. The counties of Mackinac, Chippewa, Delta, Marquette, Schoolcraft, Houghton, and Ontonagon, and the islands and territory thereto attached, the islands of Lake Superior, Huron, and Michigan, and the Green Bay, and the Straits of Mackinac and the River Ste. Marie, shall constitute a separate judicial district, and be entitled to a district judge and district attorney.

SEC. 2. The district judge shall be elected by the electors of such district, and shall perform the same duties and possess the same powers as a circuit judge in his circuit, and shall hold his office for the same period.

SEC. 3. The district attorney shall be elected every two years by the electors of the district, shall perform the duties of prosecuting attorney throughout the entire district, and may issue warrants for the arrest of offenders in case of felony, to be proceeded with as shall be prescribed by law.

SEC. 4. Such judicial district shall be entitled at all times to at least one Senator, and, until entitled to more by its population, it shall have three members of the House of Representatives, to be apportioned among the several counties by the Legislature.

SEC. 5. The Legislature may provide for the payment of the district judge a salary not exceeding one thousand dollars a year, and of the district attorney not exceeding seven hundred dollars a year; and may allow extra compensation to the members of the Legislature from such territory, not exceeding two dollars a day during any session.*

SEC. 6. That elections for all district or county officers, State Senators, or Representatives, within the boundaries defined in this article, shall take place on the

*Office of district judge abolished January 1, 1864, and of district attorney, March 5, 1865.

Tuesday succeeding the first Monday in November in the respective years in which they may be required ; the county canvass shall be held on the first Monday thereafter, and the district canvass on the third Monday of said November.

SEC. 7. One-half of the taxes received into the Treasury from mining corporations in the Upper Peninsula, paying an annual State tax of one per cent., shall be paid to the treasurers of the counties from which it is received, to be applied for township and county purposes, as provided by law. The Legislature shall have power, after the year one thousand eight hundred and fifty-five, to reduce the amount to be refunded.

SEC. 8. The Legislature may change the location of the State Prison from Jackson to the Upper Peninsula.

SEC. 9. The charters of the several mining corporations may be modified by the Legislature, in regard to the term limited for subscribing to stock, and in relation to the quantity of land which a corporation shall hold; but the capital shall not be increased, nor the time for the existence of charters extended. No such corporation shall be permitted to purchase or hold any real estate, except such as shall be necessary for the exercise of its corporate franchises.

ARTICLE XIX.—A.

RAILROADS.

SECTION 1. The Legislature may, from time to time, pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on different railroads in this State, and shall prohibit running contracts between such railroad companies whereby discrimination is made in favor of either of such companies as against other companies owning connecting or intersecting lines of railroad.

SEC. 2. No railroad corporation shall consolidate its stock, property, or franchises with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except upon public notice given of at least sixty days to all stockholders, in such manner as shall be provided by law.

ARTICLE XX.

AMENDMENTS AND REVISIONS OF THE CONSTITUTION.

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives. If the same shall be agreed to by two-thirds of the members elected to each house, such amendment or amendments shall be entered on their journals respectively, with the yeas and nays taken thereon; and the same shall be submitted to the electors at the next spring or autumn election thereafter, as the Legislature shall direct, and if a majority of electors qualified to vote for members of the Legislature, voting thereon, shall ratify and approve such amendment or amendments, the same shall become part of the Constitution.

SEC. 2. At the general election to be held in the year one thousand eight hundred and sixty-six, and in each sixteenth year thereafter, and also at such other times as the Legislature may by law provide, the question of the general revision of the Constitution shall be submitted to the electors qualified to vote for members of the Legislature; and in case a majority of the electors so qualified, voting at such election, shall decide in favor of a convention for such purpose, the Legislature, at the next session, shall provide by law for the election of such delegates to such convention. All the amendments shall take effect at the commencement of the year after their adoption.

CONSTITUTION OF THE UNITED STATES.

[Went into operation on the first Wednesday in March, 1789.]

PREAMBLE.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

OF THE LEGISLATIVE POWER.

SECTION 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

OF THE HOUSE OF REPRESENTATIVES.

SEC. 2. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and, until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

OF THE SENATE.

SEC. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they shall be equally divided.

The Senate shall choose their other officers, and shall have a President *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

MANNER OF ELECTING MEMBERS.

SEC. 4. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

CONGRESS TO ASSEMBLE ANNUALLY.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

POWERS.

SEC. 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

COMPENSATION, ETC., OF MEMBERS.

SEC. 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

MANNER OF PASSING BILLS, ETC.

SEC. 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to

that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sunday excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

POWER OF CONGRESS.

SEC. 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post-offices and post-roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

LIMITATION OF THE POWERS OF CONGRESS.

SEC. 9. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

No capitation, or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any State.

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office or title, of any kind whatever, from any king, prince or foreign State.

LIMITATION OF THE POWERS OF THE INDIVIDUAL STATES.

SEC. 10. No State shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts or grant any title of nobility.

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war, in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

EXECUTIVE POWER.

SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice-President, chosen for the same term, be elected as follows:

MANNER OF ELECTING.

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

(The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State as themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of

Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.*)

TIME OF CHOOSING ELECTORS.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

WHO ELIGIBLE.

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States.

WHEN THE PRESIDENT'S POWER DEVOLVES ON THE VICE-PRESIDENT.

In case of the removal of the President from office, or of his death, resignation or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed, or a President shall be elected.

PRESIDENT'S COMPENSATION.

The President shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

OATH.

Before he enter on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect and defend the Constitution of the United States."

POWERS AND DUTIES.

SEC. 2. The President shall be Commander-in-Chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the Courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

* Altered by the 12th Amendment. See page 283.

SEC. 3. He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

OFFICERS REMOVED.

SEC. 4. The President, Vice-President, and all civil officers of the United States, shall be removed from office, on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

OF THE JUDICIARY.

SECTION 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and inferior Courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SEC. 2. (The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.*)

JURISDICTION OF SUPREME COURT.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

OF TRIALS FOR CRIMES.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

OF TREASON.

SEC. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open Court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

STATE ACTS.

SECTION 1. Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

PRIVILEGES OF CITIZENS.

SEC. 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

A person charged in any State with treason, felony or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

RUNAWAYS TO BE DELIVERED UP.

No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

NEW STATES.

SEC. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress.

TERRITORIAL AND OTHER PROPERTY.

The Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory, or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SEC. 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and, on application of the Legislature, or of the Executive (when the Legislature can not be convened), against domestic violence.

ARTICLE V.

AMENDMENTS.

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution; or, on the application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by Congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth Section of the first Article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

DEBTS.

All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation.

SUPREME LAW OF THE LAND.

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land; and the Judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding.

OATH.—NO RELIGIOUS TEST.

The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office, or public trust, under the United States.

ARTICLE VII.

The ratifications of the Conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEORGE WASHINGTON,

President, and Deputy from Virginia.

New Hampshire—John Langdon, Nicholas Gilman. *Massachusetts*—Nathaniel Gorham, Rufus King. *Connecticut*—William Samuel Johnson, Roger Sherman. *New York*—Alexander Hamilton. *New Jersey*—William Livingston, David Brearley, William Patterson, Jonathan Dayton. *Pennsylvania*—Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas Fitzsimmons, Jared Ingersoll, James Wilson, Gouverneur Morris. *Delaware*—George Read, Gunning Bedford, Jr., John Dickinson, Richard Bassett, Jacob Broom. *Maryland*—James M'Henry, Daniel of St. Tho. Jenifer, Daniel Carroll. *Virginia*—John Blair, James Madison, Jr. *North Carolina*—William Blount, Richard Dobbs Spaight, Hugh Williamson. *South Carolina*—John Rutledge, Chas. Cotesworth Pinckney, Charles Pinckney, Pierce Butler. *Georgia*—William Few, Abraham Baldwin.

Attest,

WILLIAM JACKSON, *Secretary.*

AMENDMENTS TO THE CONSTITUTION.

[The first ten amendments were proposed by Congress at their first session, in 1789. The eleventh was proposed in 1794, and the twelfth in 1803.]

ARTICLE I.

FREE EXERCISE OF RELIGION.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

RIGHT TO BEAR ARMS.

A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

NO SOLDIER TO BE BILLETED, ETC.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

UNREASONABLE SEARCHES PROHIBITED.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

CRIMINAL PROCEEDINGS.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offense to be put twice

in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

MODE OF TRIAL.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

ARTICLE VII.

RIGHT OF TRIAL BY JURY.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by jury shall be otherwise re-examined in any Court of the United States than according to the rules of the common law.

ARTICLE VIII.

BAIL.—FINES.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

RIGHTS NOT ENUMERATED.

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

POWERS RESERVED.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

ARTICLE XI.

LIMITATION OF JUDICIAL POWER.

The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

ARTICLE XII.

ELECTION OF PRESIDENT.

The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President and of all persons voted for as Vice-President, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such a majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately by ballot the President. But in choosing the President, the vote shall be taken by States, the representatives from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the

House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them. before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other Constitutional disability of the President.

The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

But no person Constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

[Ratified in 1865.]

ARTICLE XIII.

SEC. 1. Neither Slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation.

[Ratified in 1868.]

ARTICLE XIV.

SEC. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States. Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed; but whenever the right to vote at any election for electors of President and Vice-President, or United States Representatives in Congress, executive and judicial officers, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crimes, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in that State.

SEC. 3. No person shall be a Senator or Representative in Congress, elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof; but Congress may, by a vote of two-thirds of each House, remove such disability.

SEC. 4. The validity of the public debt of the United States authorized by law, including debts incurred for the payment of pensions and bounties for service in suppressing insurrection or rebellion, shall not be questioned; but neither the United States nor any State shall assume to pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave, but all such debts, obligations, and claims shall be illegal and void.

SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

[Ratified in 1870.]

ARTICLE XV.

SEC. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color or previous condition of servitude.

SEC. 2. The Congress shall have power to enforce this Article by appropriate legislation.

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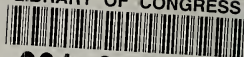
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